IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL,
Plaintiff/Respondent,

vs.

GERALD ARMSTRONG,
Defendant/Appellant.

NO. A075027

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 10

For the Plaintiff/Respondent:

Andrew Wilson, Esq.
WILSON, RYAN & CAMPILONGO
115 Sansome Street, 4th Floor
San Francisco, CA 94104

For the Defendant/Appellant (In Pro Per):

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL,)
Plaintiff,)
)
vs.)
)
GERALD ARMSTRONG,) No. 157680
Defendant.)
)

GARY W. THOMAS	JUDGE
JOHN P. MONTGOMERY	COURT EXECUTIVE OFFICER
ELAINE PASSARIS	REPORTER

For the Plaintiff:

Andrew Wilson, Esq.
WILSON, RYAN & CAMPILONGO
115 Sansome Street, 4th Floor
San Francisco, CA 94104

For the Defendant (In Pro Per):

Gerald Armstrong
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960

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AttorneyS for Defendant
GERALD ARMSTRONG

2534

FILED
JUL 25 1994
EDWARD M. KRITZMAN, CLERK
S Robles
BY S. ROBLES, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY DEP.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

AND RELATED CROSS-COMPLAINT

No. **BC 052395**

DECLARATION OF FORD GREENE IN OPPOSITION TO CSI'S MOTION FOR SUMMARY ADJUDICATION

DATE: August 2, 1994
TIME: 8:30 a.m.
DEPT: 30

Discovery Cut Off: 11/7/94
Disco Motion Cut Off: 11/21/94
Trial Date: 11/7/94

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California and am the attorney of record for Gerald Armstrong, defendant herein.

2. I was the attorney of record for Richard and Vicki

ORIGINAL

Aznaran in the case entitled Aznaran v. Church of Scientology, United States District Court, Central District of California, Case No. 88-1786-JMI((Ex). Attached hereto are true and correct copies of documents in that case as follows:

Exhibit A:	Declaration of Sam Brown dated August 26, 1991.
Exhibit B:	Declaration of Laurie J. Bartilson dated August 30, 1991.
Exhibit C:	Declaration of Kenneth Long dated September 10, 1991;
Exhibit D:	Declaration of Peter Jacobs dated October 7, 1991;
Exhibit E:	Declaration of Lawrence Heller dated November 12, 1991;
Exhibit F:	Declaration of Laurie J. Bartilson dated March 16, 1992.

3. On March 3, 1992, I was present at a proceeding before the Honorable Michael Dufficy of the Marin County Superior Court where the above captioned case was first filed. Attached hereto as Exhibit G in a true and correct copy of the transcript of said proceeding.

Under penalty of perjury pursuant to the laws of the State of California I hereby declare that the foregoing is true and correct according to my first-hand knowledge, except those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed on July 22, 1994, at San Anselmo, California

FORD GREENE

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: DECLARATION OF FORD GREENE IN OPPOSITION TO CSI'S MOTION FOR SUMMARY ADJUDICATION

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028
(By Telecopier)

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: July 22, 1994

DECLARATION OF SAM BROWN

I, Sam Brown, hereby declare:

1. I am over the age of eighteen. I am a licensed private investigator in northern California. I run an investigation firm called Sam Brown and Associates. I have personal knowledge of the facts set forth below, except as stated to be on information and belief, and as to those facts, I believe them to be true. If called upon to do so, I could and would competently testify thereto.

I ran a surveillance outside the law offices of Ford Greene at 711 Sir Francis Drake Boulevard, San Anselmo, California during the period from August 15 through August 21, 1991. I have been informed and believe that Greene is the attorney for plaintiffs in the case of *Aznaran v. Church of Scientology of California,* et al., Case No. CV 88-1786 JMI (Ex) in Los Angeles Federal court.

3. During the course of this surveillance, a white male having long brown hair tied back in a pony tail, was observed entering and leaving the Greene law offices each day from the 15th through the 21st. This man spent most of the day at the offices. He was also observed bringing in boxes from Kinko's copy center.

4. This individual was videotaped entering and leaving the building and standing in front of it on

several different days. Some portions of the video have been printed as still photographs and are attached hereto as exhibit A.

5. I was informed by the law firm which represents some of the defendants in the Aznaran case that the man in these photographs is an individual known as Gerald Armstrong.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California the 26th day of August 1991.

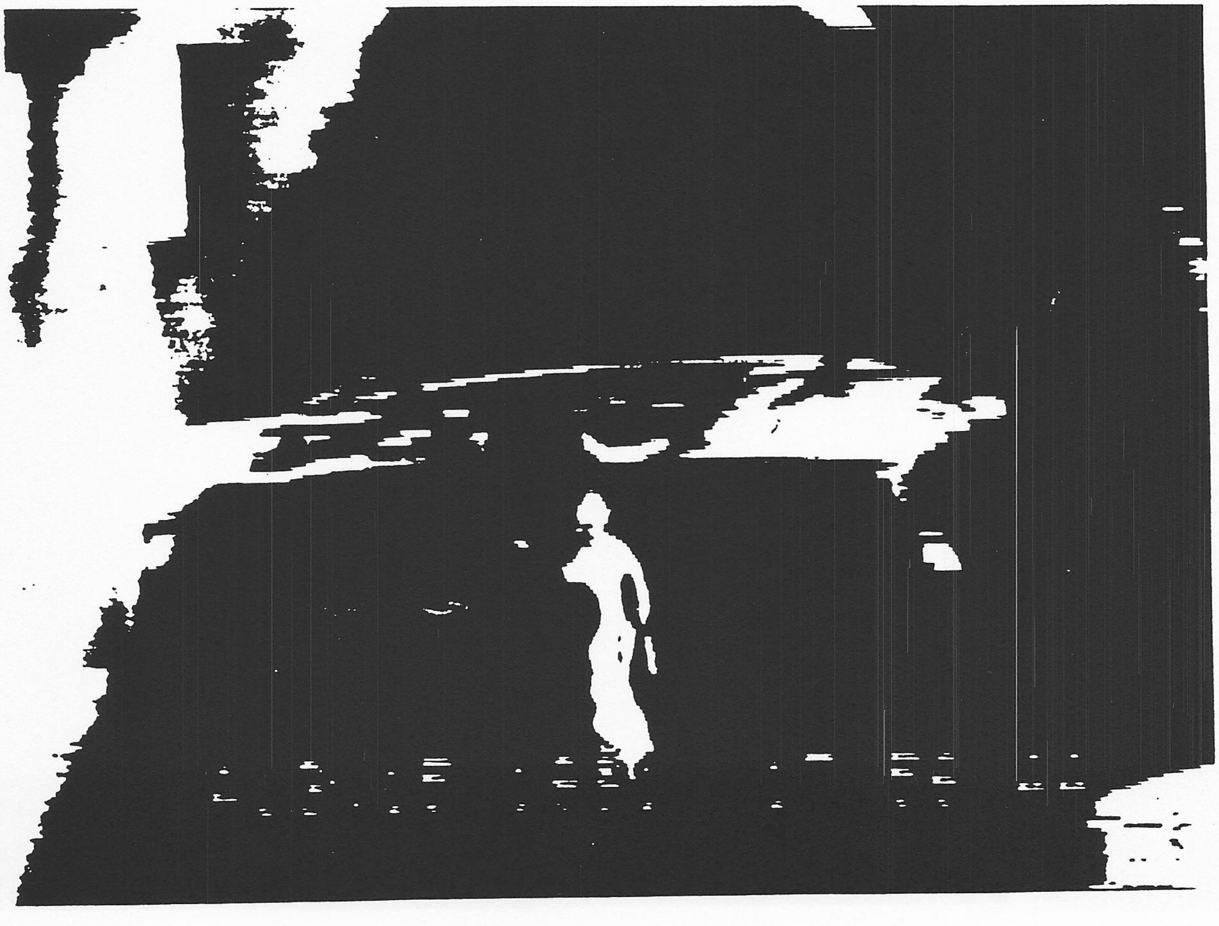
Sam Brown

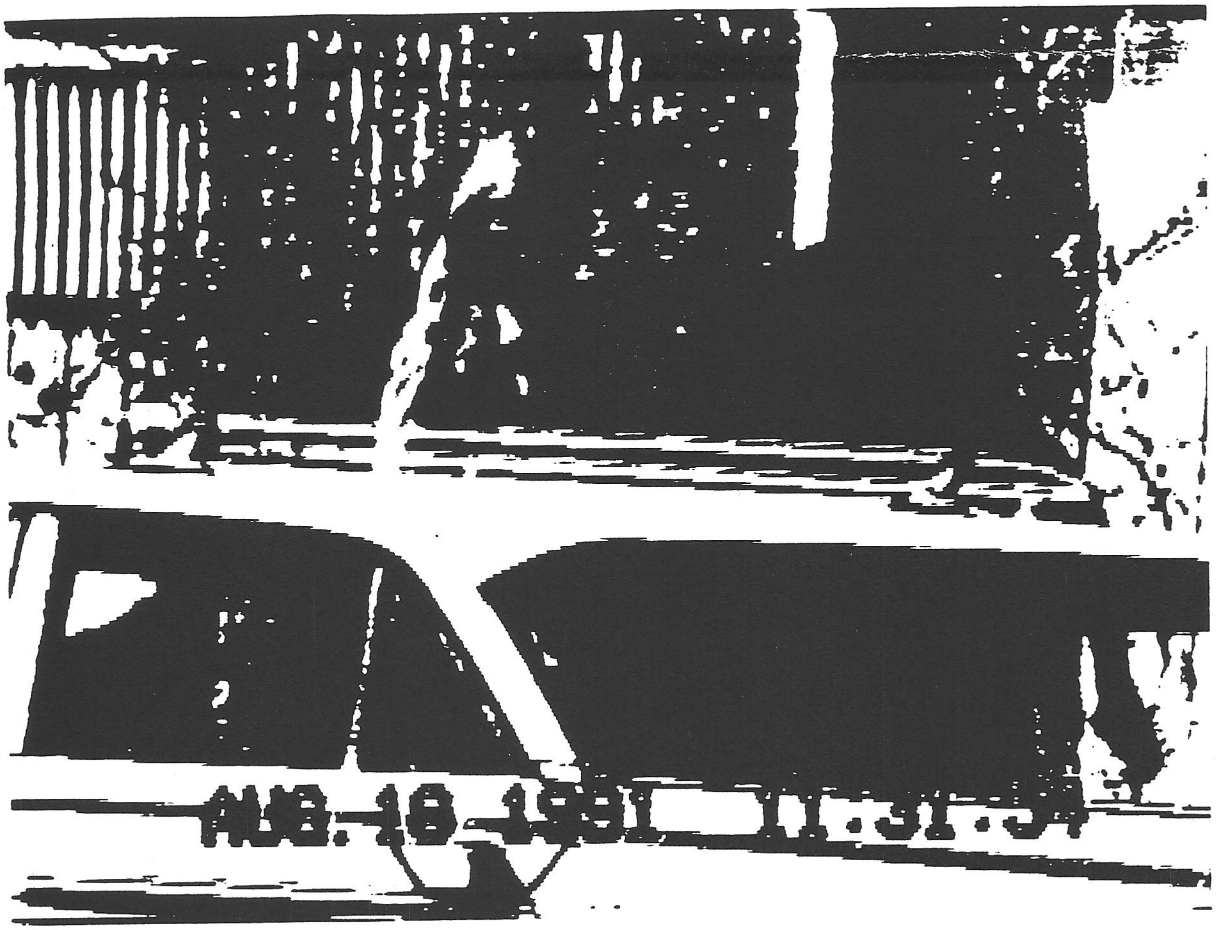
SAM BROWN

Tabs™ · Legal Tabs Co. 1-800-322-3022

Form EX5-B

EXHIBIT A



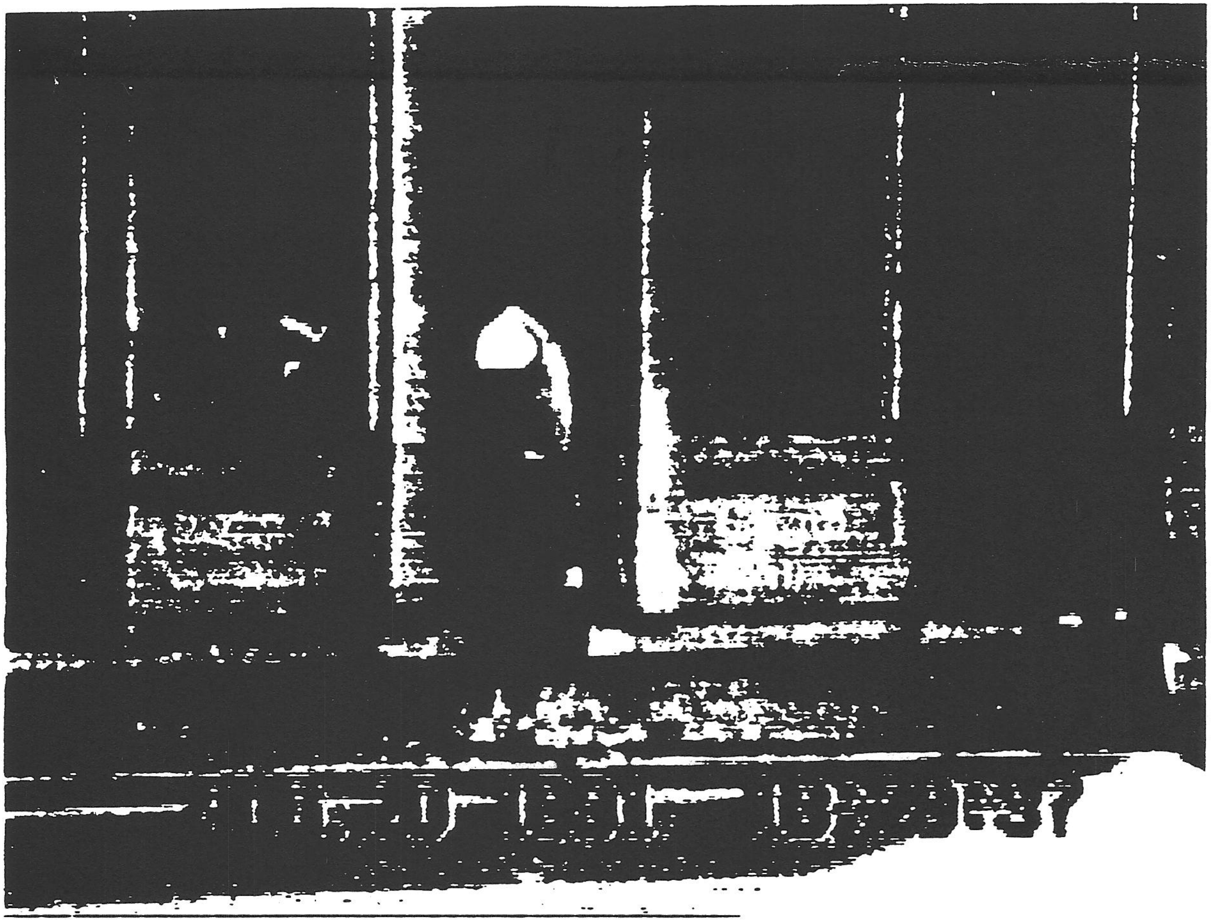

AUG.19 1991 11:31:34

AUG.19 1991 19:40:58

AUG. 20 1991 12:20:20

AUG. 20 1991 12:32:13

[illegible] 20 [illegible] 18:27:16



DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, hereby declare and state:

1. I am co-counsel of record for plaintiffs in the case of Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex). I have personal knowledge of the matters set forth herein and, if called upon to do so, could and would competently testify thereto.

2. On August 19, 1991, I called the offices of Ford Greene, counsel for plaintiffs in this case, to arrange to have a courier pick up several oppositions which plaintiffs were due to file that day.

3. The person who answered the telephone in Mr. Greene's office identified himself as Gerald Armstrong. When queried, Armstrong stated that he was at Greene's office "helping out." I know Armstrong, as I attended his deposition in another case in which I am also counsel. He is a long-term litigation adversary of my client, Church of Scientology of California, having been sued for conversion of documents belonging to the Church's Founder.

4. I have been informed by private investigators hired by my law firm that Armstrong was present at Ford Greene's offices many times from August 3, 1991 through at least August 21, 1991, often for hours and days at a time. When my courier went to Greene's offices on August 19, 1991 to pick up papers in this case, he observed Armstrong sleeping on the floor in the office.

5. Exhibit 1 to the Reply in Support of Defendants' Motion for Summary Judgment is a true and correct copy of a transcript of an August 6, 1991 hearing in the case of

Religious Technology Center, et al. v. Yanny, Case No. BC 033035. In that case, Yanny was preliminarily enjoined by the Court from representing either the Azarans or Armstrong.

I declare under the penalties of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed this 30th day of August at Los Angeles, California.

LAURIE J. BARTILSON

DECLARATION OF KENNETH LONG

I, KENNETH LONG, hereby declare:

1. I am over the age of eighteen. I have been employed by Church of Scientology of California ("CSC") for 9 years as a paralegal, acting as CSC's representative to assist various of its attorneys during that time period. I have personal knowledge of the matters set forth below and would and could competently testify thereto if called upon to do so.

2. During the course of my employment as a paralegal, I have worked extensively on the case of Church of Scientology of California v. Armstrong, Los Angeles Superior Court Case No. C 420153, and Appellate Case No. B025920 ("Armstrong"). I am well familiar with the documents on file in Armstrong, both in the Superior Court and on appeal.

3. The trial transcripts which are part of the Armstrong record consist of 4,346 pages of testimony. The single lengthiest testimony is that of defendant, Gerald Armstrong. His testimony covers approximately 852 pages. Throughout Armtrong's testimony, there was discussion of the documents converted by Armstrong that had been ordered returned to the court and sealed by Judge Cole near the inception of the suit.

4. Discussion of the contents of these documents also occurred during the testimony of other witnesses. Vaughn Young testified for about 136 transcript pages and Laurel Sullivan for roughly 425 pages. Their testimony also included discussion of the stolen documents which had been sealed by the trial court. Thus, between Armstrong, Sullivan and Young,

nearly a third of the trial transcripts contain discussions of the very materials for which suit was originally brought to effect return and maintain privacy.

5. The Armstrong appellate briefs also contain many references to, and descriptions and discussions of the stolen documents which were sealed during this litigation and which were returned to plaintiff upon settlement of the lawsuit in December 1986. A material term of that settlement was the return of those documents and the sealing of the record in this case in order to protect the privacy and property interests of CSC and Intervenor Mary Sue Hubbard, who had initiated this action to vindicate those rights.

6. The appendices filed in the appellate court contain numerous documents that discuss the stolen documents and their contents, or matters arising from those documents. Out of 22 documents in the B038975 appendix, ten contain such references: Exhibits C, H, I, K, L, N, O, Q, U, and V. The appendix for B025920 also contains documents with such references, including pages 57-60 and 251-277.

7. All of the documents in the Armstrong appellate record, with the exception of the appellate briefs, have been sealed below since December 11, 1986 as a result of the stipulation of the parties upon settlement of the case.

8. Accordingly, on behalf of CSC, I respectfully request the Court to seal the testimony of Gerald Armstrong, Vaughn Young and Laurel Sullivan in the Armstrong Reporter's Transcript, pages 57-60 and 251-277 in Armstrong Appellant's Appendix, pages 4-28 of Respondent's Brief in Armstrong, and

Exhibits C, K, L and N in the "Appendix of Appellants" filed in Appeal No. B038975. If these portions of the appellate record are also sealed, it will preserve the property and privacy interests which CSC has fought to protect by its filing of the Armstrong suit, and which the trial court recognized in sealing the documents at the outset of the litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California this 10th day of September, 1991.

Kenneth Long

Kenneth Long

DECLARATION OF PETER M. JACOBS

I, Peter M. Jacobs, hereby declare:

1. I am an attorney duly licensed to practice law in the State of California. I am an associate with the law firm of Bowles & Moxon, counsel of record for some of the defendants in Aznaran v. Church of Scientology of California, et al., Case No. CV 88-1786 JMI(Ex).

2. Attached hereto as Exhibit A is a true and correct copy of an order of the California Court of Appeal, Second Appellate District, Division Three in the case of Church of Scientology of California v. Armstrong, Appellate Case. Nos. B025920 and B038975.

3. Attached hereto as Exhibit B is a true and correct copy of a Notice of Motion and Motion to Seal Record on Appeal; Memorandum of Points and Authorities, filed in the case of Church of Scientology of California v. Armstrong, Case No. B02590 & B038975, Court of Appeal of the State of California, Second Appellate District, Division Three.

4. Attached hereto as Exhibit C is a true and correct copy of a Notice of Motion and Motion for an Order Directing Non-Interference with Witnesses and Disqualification of Counsel, filed in the case of Corydon v. Church of Scientology International, et al., Case No. C 694401, Los Angeles Superior Court.

5. Attached hereto as Exhibit D is a true and correct copy of a Declaration of Gerald Armstrong presented to the Court at a hearing on July 24, 1991 in the case of Religious Technology Center, et al. v. Yanny, et al., Case No. BC 033035, Los

Angeles Superior Court.

6. Attached hereto as Exhibit E is a true and correct copy of a slip opinion of the Eleventh Circuit Court of Appeals in the case of Wakefield v. Church of Scientology of California, Appellate Case. No. 89-3796, entered on August 12, 1991.

7. Attached hereto as Exhibit F is a true and correct copy of a slip opinion of the Eleventh Circuit Court of Appeals in the case of McLean v. Church of Scientology of California, et al., Appellate Case No. 89-3505, entered on September 17, 1991.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California, the 7th day of October 1991.

Peter M. Jacobs

Peter M. Jacobs

EXHIBIT D

I, GERALD ARMSTRONG, declare and state that:

1. I am the defendant and cross-complainant in the case of Church of Scientology of California vs. Gerald Armstrong, Los Angeles Superior Court No. C420153. I was a member of Scientology from 1969 to 1981 and have been involved in litigation with various Scientology entities, hereinafter referred to as "the organization", since 1982. I have testified approximately 47 days in trials or depositions in at least 10 cases against Scientology. I am very knowledgeable in Scientology litigation and operations, and am qualified to render the opinion in Paragraph 7 below.

2. In 1985 and throughout 1986, I worked as a paralegal in the law firm of Flynn, Joyce and Sheridan in Boston, Massachusetts. I worked on all the organization-related litigation handled by the firm during that period. Michael Flynn was the prime mover in much of the organization-related litigation throughout the United States until December 1986 when he settled all the cases in which he was involved. I was represented in Armstrong by Flynn, Joyce and Sheridan and the law firm of Contos and Bunch in Woodland Hills, California until the settlement.

3. In a declaration I executed December 25, 1990, which I filed in the California Court of Appeal in the organization's appeal (Civ. No. B038975) from a Superior Court ruling unsealing the Armstrong court file, which had been sealed in December, 1986, I detailed the circumstances of and my involvement in the settlement. In that declaration, I waived the attorney-client privilege between Mr. Flynn and me only as to our

knowing or learning that they would be denied the documentary evidence which had previously been available, denied assistance from the key witnesses against the organization, and denied assistance from the most knowledgeable attorneys in the world in this field of litigation would be more than reluctant to accept representation of aggrieved individuals. Add to that, the general knowledge in the legal community of the harassive and threatening practices of the organization toward adverse attorneys, and the fact that well respected attorneys such as Mr. Flynn had agreed to an unethical or illegal settlement to escape the litigation, and it is no surprise that this country's attorneys avoid representing the organization's many victims. The victims are effectively cut off from communication with witnesses and access to evidence, and their ability to obtain any legal representation denied.

I declare under the penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and based on my personal knowledge, except those matters stated on information and belief, and as to those matters, I am informed and believe them to be true.

Executed this 16th day of July, 1991, at Los Angeles, California.

GERALD ARMSTRONG

DECLARATION OF LAWRENCE E. HELLER

I, Lawrence E. Heller, hereby declare:

1. I am an attorney licensed to practice law in the courts of the State of California and was involved in the Settlement Agreement on behalf of the Church of Scientology in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. I have personal knowledge of the facts set forth below and if called upon to do so, could and would competently testify thereto.

2. I am familiar with the following exhibits submitted by plaintiffs Vicki and Richard Aznaran in their Opposition to Defendants' Motion to Seal Prior Settlement Agreement:

1) Exhibit 1 of Exhibit E: "Mutual Release of All Claims and Settlement Agreement";

2) Exhibit I: "Indemnity Agreement."

Each of these documents was part of the Settlement Agreement in the above-cited Armstrong case. All parties signatory to this Agreement agreed to maintain the confidentiality of these documents.

3. The attached "Settlement Agreement" (Ex. O) is a document prepared by Jerry Armstrong's attorney, Michael Flynn, and was not shown to this declarant at the time of settlement pursuant to the wishes of Mr. Armstrong and Attorney Flynn. As recited in the "Mutual Release of all Claims," it was the intent of Mr. Armstrong, Attorney Flynn and the other settling parties represented by Mr. Flynn that this document be and remain confidential. I have however previously seen this document when it was attached to pleadings by Mr. Armstrong in

the case of Corydon v. CSC, et al., Case No. C 694401, wherein I am one of the counsel of record.

4. I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on November 12, 1991, at Los Angeles, California.

L E Heller

LAWRENCE E. HELLER

DECLARATION OF LAURIE J. BARTILSON

I, LAURIE J. BARTILSON, declare,

1. I am an attorney licensed to practice in the State of California and I am admitted to practice before this Court. I am a partner in the law firm of Bowles & Moxon, attorneys of record for some of the defendants in the above-captioned matter. I have personal knowledge of the matters set forth below and could and would competently testify thereto if called upon to do so.

2. Attached hereto are true and correct copies of the following documents:

Exhibit A: Statement of Decision issued on July 18, 1990 in the case of Religious Technology Center, et al. v. Joseph A. Yanny, et al., Case No. C 690 211, Los Angeles Superior Court ("RTC v. Yanny I").

Exhibit B: Portions of the Reporter's Transcript of the deposition of Joseph A. Yanny, taken on March 10, 1992 in the case of Religious Technology Center, et al. vs. Joseph A. Yanny, et al., Case No. BC 033035, Los Angeles Superior Court ("RTC v. Yanny II").

Exhibit C: Order Vacating Court's Prior Approval of Substitution of Counsel and Order Approving Plaintiffs' Request To Be In Pro Per, issued on July 11, 1991 and filed on July 24, 1991 in the case of Vicki J. Aznaran, et al. Church of Scientology of California, et al., Case No. CV-88-1786 JMI (Ex).

Exhibit D: Ruling on Submitted Matter, issued on July 31, 1991 in the case of Religious Technology Center, et al. vs.

Joseph A. Yanny, et al., Case No. BC 033035, Los Angeles Superior Court ("RTC v. Yanny II").

Exhibit E: Association of Trial Counsel, John Clifton Elstead; Declaration of Ford Greene Regarding Association of John Clifton Elstead as Trial Counsel; Declaration of Vicki J. Aznaran Regarding Association of John Clifton Elstead as Trial Counsel; Declaration of Richard N. Aznaran Regarding Association of John Clifton Elstead as Trial Counsel, filed on August 1, 1991 in the case of Vicki J. Aznaran, et al. vs. Church of Scientology of California, et al., Case No. CV-88-1786 JMI (Ex).

Exhibit F: Portions of the Reporter's Transcript of the deposition of Gerald Armstrong, taken on March 3, 1992 in the case of Steven Hunziker, et al. vs Applied Materials, Inc., et al., Case No. 692629, Superior Court for the County of Santa Clara.

I declare under penalty of perjury of the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 16th day of March, 1992, in Los Angeles, California.

Laurie J. Bartilson

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

HON. MICHAEL B. DUFFICY, JUDGE DEPARTMENT 4

---OOO---

CHURCH OF SCIENTOLOGY INTERNATIONAL, A CALIFORNIA NOT-FOR-PROFIT RELIGIOUS CORPORATION, PLAINTIFFS, VS. GERALD ARMSTRONG, ET AL., DEFENDANTS.	NO. 152229

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, MARCH 3, 1992

REPORTED BY: DEBORAH S. BARTUNEK, CSR 4822

A-P-P-E-A-R-A-N-C-E-S

TUESDAY, MARCH 3, 1992

---ooo---

FOR THE PLAINTIFFS:

WILSON, RYAN, BLUM & CAMPILONGO
235 MONTGOMERY STREET, SUITE 450
SAN FRANCISCO, CALIFORNIA 94104
BY: ANDREW H. WILSON, ESQUIRE

BOWLES & MOXON
6255 SUNSET BOULEVARD, SUITE 2000
HOLLYWOOD, CALIFORNIA 90028
BY: LAURIE J. BARTILSON, ESQUIRE

FOR THE DEFENDANT GERALD ARMSTRONG:

FORD GREENE, ESQUIRE
711 SIR FRANCIS DRAKE BOULEVARD
SAN ANSELMO, CALIFORNIA 94960

FOR PETITIONER/INTERVENOR JOSEPH A. YANNY:

LEWIS, D'AMATO, BRISBOIS & BISGAARD
221 NORTH FIGUEROA STREET, SUITE 1200
LOS ANGELES, CALIFORNIA 90012
BY: GRAHAM E. BERRY, ESQUIRE

TUESDAY, MARCH 3, 1992 1:30 P.M.

---OOO---

P-R-O-C-E-E-D-I-N-G-S

THE COURT: GOOD AFTERNOON. ALL RIGHT IN THE MATTER OF CHURCH OF SCIENTOLOGY INTERNATIONAL VERSUS GERALD ARMSTRONG, ET AL. CASE NUMBER 152229.

STARTING WITH COUNSEL FOR PLAINTIFF, COULD WE HAVE YOUR APPEARANCES FOR THE RECORD PLEASE?

MR. WILSON: GOOD AFTERNOON, YOUR HONOR. MY NAME IS ANDREW WILSON; WILSON, RYAN, BLUM & CAMPILONGO, APPEARING ON BEHALF OF THE PLAINTIFF.

AND SEATED TO MY LEFT IS --

MS. BARTILSON: LAURIE BARTILSON FROM BOWLES & MOXON, ALSO FOR PLAINTIFF.

THE COURT: ALL RIGHT.

MR. GREENE: FORD GREENE APPEARING ON BEHALF OF GERALD ARMSTRONG, THE DEFENDANT.

MR. BERRY: GRAHAM BERRY OF LEWIS, D'AMATO, BRISBOIS & BISGAARD APPEARING ON BEHALF OF THE PETITIONER AND PROPOSED INTERNEVER.

THE COURT: OKAY. I HAVE REVIEWED THE PLEADINGS THAT HAVE BEEN FILED TO DATE; NEEDLESS TO SAY IT'S MASSIVE.

I WANT TO INDICATE TO YOU TENTATIVELY WHAT I PROPOSE DOING, THEN I'M GOING

TO -- I'M SURE THERE WILL BE SOME ARGUMENT.

DEFENDANT MR. ARMSTRONG IS ENTITLED UNDER THE CODE, UNDER THE LOCAL RULES, TO ONE CONTINUANCE OF THE HEARING ON THE -- FOR, I THINK, PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION.

I'M INCLINED TO, AFTER REVIEWING THE PAPERS, TO GRANT PLAINTIFFS -- TO GRANT THE REQUEST FOR THE CONTINUANCE, BUT TO GRANT PLAINTIFFS' REQUEST FOR A TEMPORARY RESTRAINING ORDER PENDING THE HEARING.

THE INTENT OF THE TEMPORARY RESTRAINING ORDER IS SIMPLY TO PRESERVE THE STATUS QUO, NOT TO ORDER ANYBODY TO DO -- TO DO ANYTHING AFFIRMATIVELY, JUST TO FREEZE EVERYTHING UNTIL WE HAVE A FULL HEARING.

SECONDLY, IN REGARD TO MR. YANNY'S APPLICATION TO INTERVENE, I WANT TO SET THAT FOR HEARING SO WE CAN HAVE A FULL HEARING ON THAT. THE PEOPLE HAVE AN OPPORTUNITY TO FILE PAPERS IN OPPOSITION, AND SO FORTH.

I WOULD BE INCLINED, THOUGH, TO -- TODAY TO GRANT A REQUEST TO FILE AN AMICUS CURIAE BRIEF.

SO FOR THE SAKE OF ARGUMENT, THEN IF HIS MOTION TO INTERVENE WERE TO BE DENIED, HE WOULD AT LEAST HAVE AN OPPORTUNITY TO FILE WITH THE COURT AN AMICUS BRIEF AND HAVE HIS POSITION

HEARD, WHICH WOULD APPEAR TO ME NOT TO PREJUDICE THE PLAINTIFF OR DEFENDANT.

AND THEN I WOULD SET THE MATTER FOR HEARING, SPECIALLY SET IT AT 9:00 IN THE MORNING SO HE COULD HAVE AS MUCH TIME AS HE NEEDS, OR SOME DATE AFTER MARCH 16TH WHEN I RETURN.

THE JURY TRIAL I'M IN RIGHT NOW WILL STILL BE PROCEEDING, SO I WAS GOING TO SUGGEST A DAY, EITHER THURSDAY OR FRIDAY OF THAT WEEK.

SO WITH THAT -- THOSE REMARKS IN MIND, FIRST LET ME ASK THE PLAINTIFF:

WHAT'S YOUR POSITION AS FAR AS TODAY'S HEARING AFTER HAVING HEARD WHAT I INDICATED?

MR. WILSON: YOUR HONOR, WE WOULD HAVE ABSOLUTELY NO PROBLEM WITH ANYTHING WITH YOUR ORDER, PARTICULARLY. THAT'S ALL WE WANT. WE JUST WANTED TO GET A HEARING. IF THE HEARING WAS GOING TO BE PUT OFF, WE WANTED A T.R.O. TO PRESERVE THE STATUS QUO.

WE THINK WE'RE ENTITLED TO IT FOR THE SAME REASONS THAT WE SET FORTH IN THE PRELIMINARY INJUNCTION PAPERS.

WITH SOME HESITANCY, I WOULD POINT OUT THAT I DON'T BELIEVE THAT THE DEFENDANT IS ENTITLED TO A CONTINUANCE UNDER 527, BECAUSE NO T.R.O. WAS GRANTED. HE ONLY GOT THE -- THE ORDER TO SHOW CAUSE. SO HE REALLY DOESN'T HAVE

AN ABSOLUTE RIGHT TO IT.

THAT'S THE ONLY COMMENT THAT I HAVE.

THE COURT: BUT AS A PRACTICAL MATTER, I'M NOT GOING TO BE HERE ON FRIDAY. I'M INVOLVED IN A JURY TRIAL, SO IT WOULDN'T BE PRACTICAL.

MR. WILSON: YOUR HONOR, WE -- I THINK YOUR SOLUTION IS A GREAT SOLUTION TO THE PROBLEM. WE COMPLETELY AGREE WITH IT.

THE COURT: MR. GREENE.

MR. GREENE: I DON'T THINK IT'S A GREAT SOLUTION.

FIRST OF ALL, WITH RESPECT TO THE GRANTING OF A TEMPORARY RESTRAINING ORDER, IT WOULD NOT PRESERVE THE STATUS QUO. WHAT IT WOULD DO WOULD BE TO IN EFFECT BE MANDATORY, AND COMPEL MR. ARMSTRONG TO ENGAGE IN CONDUCT THAT HE'S NOT ENGAGING IN NOW.

I POINT OUT TO THE COURT THAT BASED ON THE PLAINTIFF'S MOVING PAPERS, THE CONDUCT OF WHICH THEY COMPLAIN COMMENCED, ACCORDING TO THEIR PAPERS, IN JUNE OF 1991 ALMOST A YEAR AGO.

AND SO, FOR THE PLAINTIFF TO COME INTO COURT NOW, EIGHT MONTHS LATER, AND SAY, WE'RE BEING IRREPARABLY HARMED, WE NEED A TEMPORARY RESTRAINING ORDER, IS BELIED BY THE DELAY THAT PLAINTIFF HAS ENGAGED IN IN SEEKING

THE RELIEF THAT THEY CLAIM THEY NEED.

THE COURT: SEE, NOW WE'RE STARTING TO GET FAR AFIELD. THIS IS ALL SUBJECTS WE'RE GOING TO ARGUE WHEN WE HEAR THE APPLICATION FOR PRELIMINARY INJUNCTION. THE INTENT OF THE TEMPORARY RESTRAINING ORDER IS SIMPLY TO FREEZE EVERYTHING UNTIL BOTH SIDES HAVE THEIR HEARINGS.

I DON'T WANT TO SPEND A LOT OF TIME GOING INTO YOUR ARGUMENT, WHICH I'LL LISTEN TO IN DETAIL AT THE NEXT HEARING.

MR. GREENE: PART OF THE PROBLEM ALSO, YOUR HONOR, IS I'M NOT REALLY SURE WHAT THE SPECIFIC PROVISIONS OF A TEMPORARY RESTRAINING ORDER WOULD BE. I HAVE SERIOUS QUESTIONS ABOUT HOW THOSE WOULD BE ENFORCED.

FOR EXAMPLE, GERALD ARMSTRONG IS MY EMPLOYEE. HE WORKS IN MY OFFICE, AS YOU PROBABLY NOTED FROM THEIR MOVING PAPERS.

WOULD THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER COMPEL HIM NOT TO WORK FOR ME? I WOULD SUBMIT THAT THERE WOULD -- THAT IF THE ORDERS ISSUE, AND ARMSTRONG DOES START WORKING FOR ME, THAT THE PLAINTIFFS WILL BE IN HERE ON SOME SORT OF A CONTEMPT CITATION OR SOME OTHER EFFORT TO ENFORCE THE RESTRAINING ORDER.

THE COURT: WELL, WE'RE GOING TO GET TO THE CONTENDED RESTRAINING ORDER IN JUST A

SECOND.

LET ME ASK COUNSEL FOR MR. YANNY'S SIDE OF THE CASE, WHAT'S YOUR POSITION?

MR. BERRY: YOUR HONOR, THE TEMPORARY RESTRAINING ORDER WOULD DO AN END RUN AROUND JUDGE CADANA'S (PHONETIC) ORDER WHICH EXPRESSLY ADMITS TO YANNY TO GATHER EVIDENCE FOR HIS DEFENSE, AND SPECIFICALLY TO INTERVIEW WITNESSES SUCH AS MR. ARMSTRONG.

FURTHERMORE, IT EXPRESSLY SUGGESTS THAT THIS COURT HAS FOUND A LIKELIHOOD OF SUCCESS ON THE MERITS.

THE COURT: NO, NO, I DIDN'T SAY THAT.

WHAT'S HAPPENED ON THIS CASE, WITH A CHALLENGE IT WAS ASSIGNED TO ME FOR HEARING ON FRIDAY. I'M NOT GOING TO BE HERE FRIDAY. I'M INVOLVED IN THE FIFTH WEEK OF A MURDER TRIAL THAT I'M GOING TO COMPLETE IN AN ORDERLY MANNER.

I WANT TO GIVE ALL PARTIES IN THIS CASE AS MUCH TIME AS THEY NEED TO ARGUE THIS MATTER. IT'S NOT PRACTICAL TO ARGUE IT BEFORE THE FRIDAY HEARING. UNDER THE LOCAL RULES NORMALLY THERE WOULD SIMPLY BE, AFTER 2:00 O'CLOCK ON THURSDAY, AN INDICATED RULING.

I'M NOT GOING TO DO THAT. I'M GOING TO GIVE ALL OF YOU A HEARING BEFORE I MAKE A RULING. I'LL SPECIALLY SET IT THE WEEK OF THE

16TH WHEN I GET BACK.

AND TO GIVE MR. YANNY AN OPPORTUNITY, I'M GOING TO HEAR HIS MOTION TO INTERVENE AT THE TIME.

BUT I'M GOING TO SIGN TODAY AN ORDER ALLOWING HIM TO FILE HIS AMICUS SO HIS POSITION WILL BE SET FORTH PRIOR TO THAT HEARING.

MR. BERRY: AND WITH REGARD TO THAT, SHOULD A COMPLAINT TO INTERVENE BE FILED PRIOR TO THAT HEARING?

THE COURT: NO, BECAUSE I HAVEN'T RULED ON THAT MOTION.

MR. WILSON: YOUR HONOR, WOULD YOU LIKE ME TO ADDRESS THE DELAY ISSUE? I CAN ADDRESS -- I THINK I CAN, I THINK, SHOW WE HAVE NOT DELAYED, AND ANY DELAYS IN HAVING THIS MATTER HEARD WERE NOT OUR DOING. WE TRIED TO GET IT HEARD BEFORE NOW.

THE FIRST THING THAT PLAINTIFF IN THIS CASE HAS TRIED TO DO IS ENFORCE A SETTLEMENT AGREEMENT IN LOS ANGELES COUNTY SUPERIOR COURT IN AN ACTION IN WHICH IT WAS ENTERED.

THE JUDGE THERE SAID THEY DIDN'T HAVE JURISDICTION AFTER MR. ARMSTRONG GOT A TOTAL CONTINUANCE OF 45 DAYS.

THEN WE CAME HERE. IT WAS SET OVER 30 DAYS AGO. MR. GREENE BECAME DISENCHANTED

WITH JUDGE STEPHENS AND FILED HIS CHALLENGE.

WE HAVE NOT DELAYED HERE. AND I THINK THAT FOR MR. BERRY TO SAY THAT WE'RE TRYING TO DO AN END RUN AROUND AN ORDER ENTERED BY JUDGE CARDANA IS -- I'M AT A LOSS TO UNDERSTAND HOW YOU CAN MAKE THAT STATEMENT.

I'VE GOT THE ORDER HERE. THE ORDER DOES NOT SPECIFICALLY ALLOW WHAT MR. BERRY --

THE COURT: THOSE ARE JUST THE KIND OF DETAILS WE CAN'T GET INTO TODAY.

MR. WILSON: I DIDN'T WANT THAT.

THE COURT: WHAT ARE YOU SEEKING? LET'S BE CLEAR ON THIS, BECAUSE MR. GREENE CERTAINLY HAS A POINT.

WHAT ARE YOU SEEKING IN THE TEMPORARY RESTRAINING ORDER SPECIFICALLY?

MR. WILSON: WE ARE SEEKING THE SAME ORDER AS FOR THE PRELIMINARY INJUNCTION WHICH PROHIBITS MR. ARMSTRONG FROM VIOLATING THE SETTLEMENT AGREEMENT IN SEVERAL RESPECTS:

ONE, DISCLOSING THE CONTENTS OF THE SETTLEMENT AGREEMENT. THAT PROBABLY ISN'T A PROBLEM BECAUSE IT UNFORTUNATELY HAS BECOME A PUBLIC RECORD IN ANOTHER ACTION, SO ANYBODY WHO WANTS TO SEE IT IS GOING TO GET IT.

SO WE'RE TALKING ABOUT THREE OTHER PROVISIONS. A PROVISION WHICH PREVENTS MR. ARMSTRONG FROM ACTIVELY AIDING PERSONS ENGAGED

IN LITIGATION ADVERSE TO THE CHURCH OF SCIENTOLOGY, THAT'S ONE. THAT'S PROBABLY WHAT MR. GREENE IS CONCERNED ABOUT.

I'LL MAKE THIS COMMENT.

OF COURSE, WE DO NOT SAY THAT MR. ARMSTRONG CANNOT WORK FOR MR. GREENE. MR. ARMSTRONG SHOULD NOT WORK ON CASES WHICH INVOLVE THE CHURCH OF SCIENTOLOGY. THAT'S ALL WE'RE SAYING.

NOW WE -- IF HE CONTINUES TO WORK FOR MR. GREENE, WE BETTER HAVE SOME PRETTY SPECIFIC PROOF THAT WHEN HE'S DOING THAT, HE'S WORKING ON SCIENTOLOGY CASES.

I MEAN, I WOULD NOT BE SO FOOLISH AS TO COME IN HERE ON A CONTEMPT MOTION UNLESS I HAD CLEAR, CONVINCING EVIDENCE THAT MR. ARMSTRONG, IN WORKING FOR MR. GREENE, WAS VIOLATING THAT PROVISION OF THE ORDER.

THE OTHER PROVISIONS RELATE TO CONFIDENTIALITY, AND MR. ARMSTRONG'S DISCLOSURE OF EXPERIENCES THAT HE HAD WHILE HE WAS A MEMBER OF THE CHURCH OF SCIENTOLOGY, AND CERTAIN KNOWLEDGE THAT MR. ARMSTRONG MAY HAVE OF THE LIFE AND THE PEOPLE RELATED TO MR. E. RON HUBBARD, THE CHURCH'S FOUNDER.

SO IT'S THOSE FOUR PROVISIONS THAT WE'RE SEEKING. THE FIRST OF WHICH I SAID PROBABLY ISN'T A PROBLEM, AND THE SECOND THREE

ARE REALLY WHAT WE'RE CONCERNED ABOUT.

THE ONLY ONE THAT I THINK MR. GREENE HAS MADE A POINT ABOUT IS NUMBER TWO, WHICH IS THE ONE HAVING TO DO WITH AIDING PEOPLE ENGAGED IN LITIGATION WITH THE CHURCH OF SCIENTOLOGY.

MS. BARTILSON: IF I MAY JUST CLARIFY THAT PROVISION, YOUR HONOR, FOR A MOMENT.

THAT PROVISION IN THE SETTLEMENT AGREEMENT DOES NOT PROHIBIT MR. ARMSTRONG FROM BEING SUBPOENAED BY ANYONE TO GIVE TESTIMONY ANYPLACE. IT CERTAINLY WOULDN'T PREVENT MR. YANNY FROM DEPOSING MR. ARMSTRONG; IN FACT, THE DEPOSITION OF MR. ARMSTRONG IS RIGHT NOW SET IN THE YANNY MATTER FOR MARCH 16TH.

SO THAT WOULD NOT PRESENT ANY PROBLEM AS FAR AS I COULD TELL WITH MR. YANNY. WE'RE TALKING ABOUT VOLUNTARY ASSISTANCE.

THE COURT: MR. GREENE, WE REQUIRE ON A TEMPORARY RESTRAINING ORDER SPECIFIC LANGUAGE THAT DOES NOT PREVENT MR. ARMSTRONG FROM WORKING FOR YOU IN YOUR LAW OFFICE.

MR. GREENE: I NEED TO ALSO ADDRESS ADDITIONAL POINTS.

THE COURT: YOUR 15 MINUTES -- I SAID 15 MINUTES TODAY -- ARE JUST ABOUT UP.

MR. GREENE: WELL THEN, LET ME HAVE MY FAIR SHAKE.

ONE, WITH RESPECT TO THE SETTLEMENT

AGREEMENT, THAT'S A PART OF THE RECORD IN THIS CASE. SO THAT IS CERTAINLY PUBLIC, AND NOT GERMANE.

TWO: WITH RESPECT TO CONFIDENTIALITY ABOUT ARMSTRONG'S KNOWLEDGE OF THE CHURCH OF SCIENTOLOGY AND E. RON HUBBARD, OUR POSITION IS THAT FOR THE COURT TO ENJOIN ARMSTRONG FROM SPEAKING IS A VIOLATION OF THE FIRST AMENDMENT RIGHT TO FREE SPEECH.

TO ENJOIN ARMSTRONG FROM ASSOCIATING WITH INDIVIDUALS WHO MAY OR MAY NOT BE ADVERSE TO THE CHURCH OF SCIENTOLOGY IS ALSO A VIOLATION OF THE FIRST AMENDMENT RIGHT TO FREELY ASSOCIATE IN SUPPORT OF THE EXERCISE OF FREE SPEECH RIGHTS.

AND WHAT PLAINTIFFS ARE SEEKING TO DO IS TO ASK THE COURT TO ISSUE AN UNCONSTITUTIONAL ORDER.

I MIGHT POINT OUT THAT AT THIS TIME IN THE STATE LEGISLATURE HERE IN CALIFORNIA, THERE'S A BILL NUMBER 711 WINDING ITS WAY THROUGH THE SENATE WHICH WOULD SPECIFICALLY PROHIBIT AGREEMENTS SUCH AS THAT WHICH IS BEFORE THE COURT AND WHICH PLAINTIFFS ARE SEEKING THE COURT TO ENFORCE, EVEN IF TEMPORARILY.

ADDITIONALLY, WITH RESPECT TO THE SECOND ITEM MENTIONED ON PREVENTING ARMSTRONG FROM ASSISTING THOSE WHO ARE ADVERSE TO

SCIENTOLOGY, I SUBMIT THAT THE WORDING IS SO VAGUE THAT MR. ARMSTRONG CANNOT BE ON NOTICE AS TO WHAT IT IS THAT HE IS TO DO AND NOT TO DO, AND IN THAT REGARD IT IS UNCONSTITUTIONAL AS WELL.

ANY KIND OF ORDER THAT'S GOING TO IMPINGE ON FREE SPEECH RIGHTS HAS GOT TO BE NARROWLY DRAWN, AND HAS GOT TO SPECIFICALLY IDENTIFY WHAT THEIR PROHIBITED BEHAVIOR IS, AND I DON'T THINK, ONE, THAT ANY ORDER IMPINGING ON FREE SPEECH RIGHTS IS PROPER.

AND TWO: I DON'T THINK THAT SUCH AN ORDER CAN BE DRAWN WITH THE REQUISITE SPECIFICITY IN ORDER TO PASS CONSTITUTIONAL MUSTER.

FINALLY, IF THE COURT ISSUES AN ORDER LIKE THAT, WHAT IS THE EFFECT OF THE ORDER?

THE EFFECT OF THE ORDER IS THAT ARMSTRONG THEN CAN'T GO OUT AND TRY TO TALK TO WITNESSES IN ORDER TO OBTAIN THE EVIDENCE AND INFORMATION FOR HIS OWN DEFENSE IN THIS CASE.

I WOULD SUBMIT THAT, YES, THAT IF THE ORDER ISSUED, THAT ARMSTRONG WOULD BE PREVENTED FROM DOING THAT.

COUNSEL MADE THE POINT ARMSTRONG CAN BE SUBPOENAED. HOWEVER, IN THE AGREEMENT THAT SCIENTOLOGY IS ATTEMPTING TO HAVE THIS COURT

ENFORCE, THERE'S A SPECIFIC PROVISION THAT SAYS THAT ARMSTRONG IS TO, QUOTE, NOT MAKE HIMSELF AMENABLE TO SERVICE OF PROCESS CONTRARY TO THE INTENT AND SPIRIT OF THIS AGREEMENT.

HE'S SUPPOSED TO AVOID SERVICE OF PROCESS. HE IS SUPPOSED NOT TO PROVIDE TESTIMONY.

AND I THINK THAT THE ORDER, TEMPORARY AS IT MIGHT BE NOW IN MARCH OF 1992, CONCERNING CONDUCT THAT THEY CLAIM STARTED IN JUNE OF 1991, THERE AREN'T SUFFICIENT GROUNDS.

WE'RE PREPARED TOMORROW TO SUBMIT OUR OPPOSITION AS REQUIRED TO BY CCP 527 SO AS TO HAVE THE MATTER HEARD NOW, SO AS TO INSURE THAT THERE IS NOT ANY KIND OF UNCONSTITUTIONAL INFRINGEMENT BY JUDICIAL ORDER ON MR. ARMSTRONG'S RIGHTS TO FREE SPEECH AND TO FREELY ASSOCIATE.

I ALSO SUBMIT THAT WHAT THE PLAINTIFF IS SEEKING TO DO ULTIMATELY WOULD CONSTITUTE A FRAUD ON THE COURT. IT'S SAYING, MR. ARMSTRONG, YOU CAN'T GO OUT, YOU CAN'T OBTAIN EVIDENCE, YOU CAN'T ASSOCIATE WITH PEOPLE WHO ARE SUPPOSED TO BE ADVERSE TO SCIENTOLOGY. BUT WHAT WE CAN DO IS GET ALL PREPARED, BUT IF YOU DO, YOU'RE GOING TO BE IN CONTEMPT OF COURT.

THAT'S NOT FAIR.

AND SO, ON THIS SHORT NOTICE, AND ON

THIS QUICK BASIS, WITHOUT AN OPPORTUNITY TO REALLY SIT DOWN AND TOTALLY THINK ABOUT IT, THOSE ARE -- THOSE ARE THE REASONS WHY THE COURT SHOULD NOT ISSUE ANY KIND OF TEMPORARY ORDER.

AND IF THE COURT IS INCLINED TO DO SO, MY REQUEST IS THAT THE COURT STAY THE EFFECTIVENESS OF ANY SUCH T.R.O. FOR ANYWHERE FROM FOUR DAYS TO A WEEK, SO WE CAN WRIT IT BECAUSE I DON'T THINK THAT IT WOULD BE AN APPROPRIATE ORDER AND I THINK THAT IT'S SOMETHING THAT SHOULD BE REVIEWED.

THE COURT: ALL RIGHT. HERE'S WHAT WE'RE GOING TO DO.

I'M GOING TO SET THE MATTER FOR HEARING ON ALL PENDING MOTIONS FOR 9:00 O'CLOCK ON FRIDAY, MARCH 20TH.

ANY ADDITIONAL PLEADINGS OR RESPONSES --

MR. GREENE: YOUR HONOR, I'VE GOT A CONFLICT IN SONOMA COUNTY.

THE COURT: YOU CALL SONOMA COUNTY AND TELL THEM YOU WILL BE IN MARIN COUNTY BECAUSE YOU HAVE A CASE WITH COUNSEL COMING.

MR. GREENE: I WILL.

THE COURT: -- ANY ADDITIONAL PLEADINGS, RESPONSES AND SO FORTH, FROM ANY OF THE PARTIES -- THIS INCLUDES MR. YANNY'S AMICUS BRIEF -- ARE TO BE FILED BY 5:00 O'CLOCK, ACTUALLY 4:30, ON MONDAY, MARCH 16TH.

MS. BARTILSON: EXCUSE ME, YOUR HONOR.

WOULD IT BE POSSIBLE FOR US TO HAVE AN OPPORTUNITY TO DO A REPLY TO THEIR OPPOSITIONS? CAN WE SCHEDULE IT THAT WAY?

THE COURT: ALL RIGHT. THEN ANY PARTY MAY REPLY, AGAIN, BUT GIVE ME A LITTLE TIME THERE, BY THE CLOSE OF BUSINESS ON THURSDAY THE 19TH.

IF THERE ARE REPLIES, THEY BETTER BE COPIED FOR ME AND BETTER BE DELIVERED, BECAUSE I'M GOING OVER EVERYTHING THAT NIGHT.

MS. BARTILSON: OKAY.

MR. WILSON: THANK YOU, YOUR HONOR.

THE COURT: AND I'M GOING TO SIGN THE ORDER ALLOWING MR. YANNY TO FILE AN AMICUS BRIEF.

MR. BERRY: THANK YOU, YOUR HONOR.

THE COURT: AND I WILL HAVE A FULL HEARING ON THE 20TH ON HIS APPLICATION TO INTERVENE IN THE ACTION.

MR. BERRY: AND WE WILL BE HEARD ON THE AMICUS BRIEF AS WELL IN RELATION TO --

THE COURT: YES.

MR. BERRY: THANK YOU.

THE COURT: I'M GOING TO ISSUE THE REQUESTED TEMPORARY RESTRAINING ORDER, BUT WITH THE -- I WANT IN THE ORDER THE SPECIFIC RELIEF

FOR MR. ARMSTRONG THAT HE CAN CONTINUE TO WORK FOR MR. GREENE AND MR. GREEN'S LAW OFFICE.

MR. WILSON: WE WILL PUT THAT IN THERE. WE'LL SUBMIT IT TO COUNSEL FOR APPROVAL AS TO FORM. IF HE DOESN'T APPROVE IT WITH AN INDICATION THAT HE WON'T --

THE COURT: IF IT'S UNTIMELY, I WILL BE HERE THROUGH THE END OF BUSINESS ON THURSDAY, THEN I'LL BE GOING OUT OF THE COUNTRY FROM FRIDAY MORNING UNTIL MONDAY THE 16TH.

MR. WILSON: WE'LL SUBMIT THE ORDER TO YOU BY TOMORROW AT NOON.

AND WHY DON'T WE -- WHAT IF MR. GREENE HAS AN OBJECTION, HE CAN COMMUNICATE BY LETTER TO YOU WITH COPIES TO US.

THE COURT: FINE.

MR. WILSON: THAT WAY WE DON'T HAVE TO --

THE COURT: THAT'S FINE.

MR. WILSON: THANK YOU.

MR. GREENE: WHAT --

THE COURT: ANY QUESTION ABOUT SCHEDULING?

MR. GREENE: NO.

MR. BERRY: YES, YOUR HONOR. 4:00 P.M. MONDAY, MARCH 16TH, FOR OPPOSITION?

THE COURT: LET'S GO OVER THAT AGAIN.

ANY ADDITIONAL PLEADINGS, DOCUMENTS

IN OPPOSITION TO PENDING MOTIONS, AND SO FORTH, MUST BE FILED BY 4:30 ON MONDAY, MARCH 16TH.

ANY RESPONSE THAT ANY OF THE PARTIES WISH TO FILE TO ANY OF THE PLEADINGS FILED ON THE 16TH MUST BE FILED NO LATER THAN 4:30 ON THURSDAY THE 19TH, AND A HEARING ON ALL PENDING MOTIONS, NAMELY MR. YANNY'S MOTION TO INTERVENE AND PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION, WILL BE HEARD IN THIS DEPARTMENT AT 9:00 O'CLOCK ON FRIDAY, THE 20TH OF MARCH.

MR. GREENE: ONE OTHER HOUSEKEEPING MATTER BEFORE YOU IS MY EX PARTE APPLICATION, THAT I UNDERSTAND IS UNOPPOSED, TO FILE A BRIEF IN EXCESS OF 15 PAGES. CAN WE DEAL WITH THAT NOW?

MR. WILSON: NO PROBLEM.

THE COURT: LOOKING AT THE DOCUMENTS, A MERE FEW EXTRA PAGES WILL NOT BOTHER ME; SO YES, THAT WILL BE GRANTED.

MS. BARTILSON: CAN WE ASK FOR THE SAME COURTESY ON OUR REPLY, YOUR HONOR?

THE COURT: YES. LET'S JUST WAIVE THE 15 PAGES.

MS. BARTILSON: WAIVE IT.

MR. WILSON: THAT'S ONE THING WE CAN ALL AGREE ON, YOUR HONOR.

THE COURT: I'D RATHER HAVE EVERYTHING IN WRITING SO I CAN READ IT AHEAD OF TIME.

MR. GREENE: SO IF I CAN UNDERSTAND WHAT THE ORDER IS WITH RESPECT TO THE T.R.O.:

ALL OF THE RELIEF THAT IS BEING SOUGHT BY THE PLAINTIFF IN REGARD TO A PRELIMINARY INJUNCTION IS BEING GRANTED ON A TEMPORARY BASIS EXCEPT FOR ARMSTRONG WORKING IN MY OFFICE?

THE COURT: THAT'S CORRECT. THAT'S CORRECT.

MR. GREENE: OKAY. AND THEN THE REASONS FOR THAT ARE AS SET FORTH IN THEIR PAPERS AS WELL, I WOULD CONCLUDE.

I JUST WANTED TO MAKE SURE THAT I'M RIGHT.

THEN ALSO, WOULD THE SCOPE OF THAT ORDER PRECLUDE ARMSTRONG FROM TALKING TO OTHER INDIVIDUALS FOR THE PURPOSE OF OBTAINING EVIDENCE TO DEFEND HIMSELF IN THESE PROCEEDINGS?

THE COURT: I'M NOT GOING TO PRERULE ON THAT. YOU CAN USE YOUR OWN JUDGMENT. THE ORDER WILL SAY WHAT THE ORDER SAYS.

MR. WILSON: THANK YOU, YOUR HONOR.

THE COURT: ONE OTHER THING REGARDING YANNY.

I HAVE A PROPOSED ORDER REGARDING THE AMICUS. ARE YOU GOING TO PREPARE ANOTHER FORM OF ORDER, OR DO YOU WANT TO USE THE

PROPOSED ORDER?

MR. BERRY: THERE SEEMS NO REASON WHY WE CAN'T USE THE PROPOSED ORDER, YOUR HONOR.

THE COURT: I'LL JUST TAKE A LOOK AT IT.

MS. BARTILSON: MAY I SEE WHAT IT SAYS? I HAVEN'T SEEN IT, YOUR HONOR.

THE COURT: ALL RIGHT. THEN I'M GOING TO SIMPLY SIGN THAT ORDER. THAT BRIEF IS TO BE FILED BY 5:00 O'CLOCK ON THE 16TH.

MR. WILSON: THANK YOU, YOUR HONOR.

MR. GREENE: SO YOUR HONOR, JUST SO THAT I'M CLEAR WITH MR. ARMSTRONG, WE HAVE TO TRY TO GUESS WHAT THE SCOPE OF THE ORDER IS, WHAT HE CAN OR CANNOT --

THE COURT: IT'S NOT GUESSING, IT'S INTERPRETING THE ORDER. THAT'S WHAT LAWYERS DO ALL THE TIME.

MR. GREENE: I'M AWARE OF THAT.

AND ALL I CAN SAY IS I BELIEVE THAT THE COURT IS PUTTING US IN A NIGH IMPOSSIBLE POSITION, BECAUSE ON THE ONE HAND I BELIEVE THE ORDER IS GOING TO SAY ARMSTRONG CAN'T GO AND CONTACT PEOPLE ADVERSE TO SCIENTOLOGY, AS THOSE ARE THE ONLY ONES HE'S GOING TO GET ANY HELP FROM.

THE COURT: THE --

MR. BERRY: ONE POINT I WANT TO FURTHER CLARIFY:

YOUR HONOR JUST MADE A COMMENT ABOUT SOMETHING BY 5:00 P.M. MARCH 16 WITH REGARD TO THE ORDER. WAS THAT A FINAL ORDER?

THE COURT: SAY THAT AGAIN.

MR. BERRY: YOUR HONOR JUST MADE A COMMENT WHICH I MISSED ABOUT FILING ANOTHER ORDER BY MARCH 16TH. AM I MISHEARING IT?

THE COURT: NO. I WAS SAYING YOU HAVE A PROPOSED ORDER. IT SAYS PROPOSED IN THE AMICUS BRIEF. I SAID DO YOU WANT TO PREPARE ANOTHER ONE. YOU SAID NO, SO I SIMPLY SIGNED THE ONE THAT YOU SUBMITTED.

MR. BERRY: THANK YOU.

MR. WILSON: THANK YOU, YOUR HONOR.

MR. BARTILSON: THANK YOU, YOUR HONOR.

MR. BERRY: THANK YOU, YOUR HONOR.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

--OOO--

STATE OF CALIFORNIA)
) SS.
COUNTY OF MARIN)

I, DEBORAH S. BARTUNEK, DO HEREBY CERTIFY THAT I AM AN OFFICIAL COURT REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF MARIN;

THAT, AS SUCH, I REPORTED THE PROCEEDINGS HAD IN THE ABOVE-ENTITLED ACTION AT THE TIME AND PLACE SET FORTH HEREIN;

THAT MY STENOTYPE NOTES WERE THEREAFTER TRANSCRIBED INTO TYPEWRITING UNDER MY DIRECTION;

THAT THE FOREGOING PAGES, NUMBERED 3 THROUGH 22, INCLUSIVE, CONSTITUTES THE TRANSCRIPT OF THE PROCEEDINGS HELD ON THE ABOVE MENTIONED DATE, IN THE ABOVE-ENTITLED CASE.

DATED: SAN RAFAEL, CALIFORNIA, THIS 4TH DAY OF MARCH, 1992.

Deborah S. Bartunek

DEBORAH S. BARTUNEK, CSR 4822

2585

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FILED
JUL 27 1994
EDWARD M. [illegible], CLERK
BY S. ROBLES, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiff,

vs.

GERALD ARMSTRONG; THE GERALD ARMSTRONG CORPORATION, a California corporation; DOES 1-25 INCLUSIVE

Defendants.

CASE NO. BC 084642

NOTICE OF LODGING OF EXHIBIT A TO DECLARATION OF LAWRENCE E. HELLER, EXHIBIT A TO CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT

8/2

TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that plaintiff Church of Scientology International has lodged with the Court the following video tape as Exhibit A to the Declaration of Lawrence E. Heller, Exhibit A to Church of Scientology International's Reply in Support of

Motion for Summary Adjudication of the Second and Third Causes of Action of the Amended Cross-Complaint.

Dated: July 27, 1994

Respectfully submitted,

BOWLES & MOXON

By: Laurie J. Bartilson

Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On July 26, 1994 I served the foregoing document described as NOTICE OF LODGING OF EXHIBIT A TO DECLARATION OF LAWRENCE E. HELLER, EXHIBIT A TO CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE **FAX AND MAIL**
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on July 26, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Bartik
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

2589

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FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY [illegible] DEP

FILED
JUL 26 1994
EDWA[illegible], CLERK
BY S. ROBLES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, A California not-for-profit religious corporation;

Plaintiff,

v.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendant.

AND RELATED CROSS-ACTION.

Case No. BC 052395

CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT

Date: August 2, 1994
Time: 8:30 a.m.
Dept: 30

Trial Date: Nov. 7, 1994
Disc. Cut-off: Oct. 7, 1994
Mtn. Cut-off: Oct. 21, 1994

I. INTRODUCTION

In the moving papers, Church of Scientology International ("the Church") established unequivocally that no triable issue of fact exists as to two of the claims presented by defendant Gerald Armstrong's cross-complaint. In characteristic fashion, Armstrong has proferred a rambling, vitriolic opposition which fails to address the key issues raised by the Church's motion. The Church has demonstrated as a matter of law that it did not breach its 1986 settlement agreement ("the Agreement") with Armstrong; indeed, the conduct which Armstrong claims was a breach of the Agreement is not prohibited by the terms of the Agreement at all. In response, Armstrong asks the Court to imply a new, inconsistent term into an integrated contract, asserting that the Court's failure to do so would have the "unreasonable" and "harsh" result of binding him to his side of the bargain for the sole consideration of $800,000. As demonstrated below, Armstrong's request is contrary to law. Moreover, none of the evidence which he offers to support his extraordinary request supports the position which he urges, except for his own declaration, which directly contradicts his previous sworn statements. Under these circumstances, the Church's request for summary adjudication of Armstrong's breach of contract claim must be granted.

Similarly, in its moving papers, the Church demonstrated that Armstrong's abuse of process claim attempted to assert liability for conduct which, even if it was assumed to have occurred, was (1) beyond the statute of limitations, (2) privileged, and/or (3) not even a use of the Court's process. In opposition, Armstrong has provided the Court with no California authority to support his assertion that he is permitted to avoid the statute or the privilege, and no evidence raising any issue of material fact. Instead, he has once again destroyed the Court's time by filing reams of irrelevant and prejudicial material. Summary adjudication of this claim, too, is warranted, and will have the salutary effect of preventing such an inappropriate demonstration from infecting the trial of this action as well.

II. THE CHURCH IS ENTITLED TO SUMMARY ADJUDICATION OF THE BREACH CLAIM BECAUSE ITS ALLEGED CONDUCT DID NOT, AS A MATTER OF LAW, BREACH THE AGREEMENT

In his Opposition, Armstrong admits that the Settlement Agreement contains no provision prohibiting the Church from doing any of the things which Armstrong asserts in his cross-complaint are a breach of the Agreement [Oppo. at 6]. Instead, he requests that the Court re-write the Agreement to contain clauses that he and his then-attorneys failed to bargain for, and then make them retroactively binding on the Church. As demonstrated below, the extrinsic evidence which Armstrong offers to support his argument creates no issue of fact. Rather, except for Armstrong's self-serving declaration, the evidence supports the plain words contained in the Agreement, which impose no obligation of silence upon the Church. Further, Armstrong's declaration cannot be used by Armstrong to create an issue of fact because it directly contradicts his own prior admissions. FPI Development, Inc. v. Nakashima (1991) 231 Cal.App.3d 367, 398.

The relevant and controlling principles of contract law are quite simple, and largely ignored by Armstrong. The interpretation of a written instrument is essentially a judicial function to be exercised according to the generally accepted canons of interpretation. Western Medical Enterprises, Inc. v. Albers (1985) 166 Cal.App.3d 383, 389. Extrinsic evidence is admissible to interpret the instrument, but not to give it a meaning to which it is not readily susceptible, and it is the instrument itself that must be given effect. Parsons v. Bristol Development Co. (1965) 62 Cal.2d 861, 865. "The rules of interpretation of written contracts are for the purpose of ascertaining the meaning of the words used therein; evidence cannot be admitted to show intention independent of the instrument." Stevenson v. Oceanic Bank (1990) 223 Cal.App.3d 306, 316. Indeed, the parol evidence rule "generally prohibits the introduction of any extrinsic evidence to vary or contradict the terms of an integrated written instrument." Gerlund v. Electronic Dispensers International (1987) 190 Cal.App.3d 263, 270. Testimony of intention which is contrary to a contract's express terms does not give meaning to the contract, but seeks to substitute a new meaning. Such evidence is therefore excluded. Id at 273. These principles of contract interpretation provide the basic framework which must be used to analyze the arguments presented by Armstrong in his opposition.

Armstrong cites to a bevy of largely irrelevant, often outdated, and sometimes contradictory case law in an effort to create a legal theory to support his request that the Court rewrite the 1986 settlement agreement to his benefit. The Agreement itself is provided to the Court as Exhibit A to the Church's Separate Statement of Undisputed Facts, and provides its own best expression of the intent and the obligation of the parties. Indeed, each of Armstrong's arguments falls before the carefully worded and complete language of the Agreement itself:

Acknowledging that extrinsic evidence of a new term may not be admitted unless there is some ambiguity in the Agreement, Armstrong first argues that the plain language of the Agreement is made ambiguous by two separate agreements, made in December 1986, to which he was not a party. [Oppo. at 3.] These agreements, Exhibit D to the Armstrong's separate statement, consist of a stipulation and an indemnity agreement executed, not by either the Church or by Armstrong, but by some of the negotiating attorneys. Even assuming arguendo that these agreements may be considered,[1] they create no ambiguity in the Agreement: if anything, they serve to effectuate explicit promises contained in the Agreement. Paragraph 4(B) of the Agreement provides that the Church shall maintain its appeal of the decision by Judge Breckenridge on its complaint against Armstrong, and that Armstrong waives any rights which he has to oppose any further appeals by the Church or to take any further appeals of his own. The "side agreements" which he castigates do not contradict this clause: rather, they serve to effectuate it by protecting Armstrong from having to pay money to the Church while permitting the Church to maintain its appeal. The agreements thus create no ambiguity whatsoever, but simply are the physical embodiment of the compliance of Armstrong's and the Church's lawyers with paragraph 14 of the Agreement, which obligated the parties and counsel to "execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement."[2]

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[1] It is a basic principle of contract interpretation that only contracts "relating to the same matters, between the same parties" are to be interpreted together. Civil Code § 1642.

Next, Armstrong argues that "[c]onversations between and declarations of the parties during negotiations at and before the execution of the contract" may be used to aid in interpretation of the contract. [Oppo. at 4] Even if true, Armstrong has provided **no evidence at all** of conversations between the parties, or declarations by them, during negotiations at and before the contract was executed. Rather, Armstrong offers only his own declaration in which he recites conversations which he allegedly had, not with the Church, but with his own lawyer, during negotiations. Armstrong's assertions of what his lawyer supposedly told him sheds no light on the intention of the Church, the party that he now hopes to bind to a new term. However, competent evidence of conversations between the parties and their intentions at the time the Agreement was signed **does** exist, in the form of a videotape of the signing of the Agreement by Armstrong [Ex. A and Ex. B to Ex. A, Declaration of Lawrence Heller]. At that time, Armstrong assured Church representatives that he had read the entire Agreement, reviewed it with his lawyer and that, beyond the money paid to his lawyer, there were no other representations made to him of anything else that he could get in consideration for signing the Agreement. [Ex. B to Ex. A, Transcript, at 1-3.]

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[2] Armstrong also claims that his attorney, Flynn, told him that he had agreed with Church attorneys that Flynn would not represent Armstrong or others any longer in anti-Church litigation. Armstrong's hearsay assertions are not competent evidence of anything, and must be disregarded. Even if true, however, such an agreement would not contradict the plain terms of the Agreement: Armstrong and the Church expressed clearly their desire to end the litigation between them.

Third, Armstrong asserts that the Agreement is harsh and unreasonable if it binds him to silence without similarly binding the Church, and argues that this is sufficient reason for the Court to rewrite the Agreement. This is nonsense. The Church could just as easily argue that it is unfair and unjust not to require Armstrong to pay to the Church $800,000, since that is the amount that the Church was required by the Agreement to pay to him.

Fourth, Armstrong elaborately asserts that it is necessary to imply a term into the Agreement in order to effectuate the intention of the parties. However, it is clear from even a casual review of the Agreement that the parties intended their consideration to one another to be different, and not the same. While a few of the terms and conditions applied to both the Church and Armstrong, such as the release of all prior existing claims, ¶4, in general their duties were quite different. The Church, for example, was required to pay money to Armstrong's lawyer for Armstrong's lawyer to distribute to Armstrong. [Agreement, ¶3] Armstrong was not required to pay money to the Church's lawyer. [Id.] Armstrong was required to dismiss his cross-complaint. [Id, ¶4] The Church was not required to dismiss its appeal. [Id, ¶4(A), 4(B)]

Further specific promises which Armstrong made in consideration of the monetary sum paid to him by the Church are delineated in Paragraphs 7(B) - 7(H). Each of these provisions is carefully and clearly drafted to impose a duty on Armstrong, but not on the Church. In paragraph 7(B), for example, Armstrong further specifically released the Church from liability for any injuries sustained by him, known or unknown. Paragraph 7(B) contains no similar releasing obligation on the part of the Church; the Church did not receive any monetary consideration. In paragraph 7(C), Armstrong agreed to assume liability for the payment of any attorneys fees or liens. No such obligation is imposed on the Church; again, only Armstrong received monetary consideration. In paragraph 7(E), Armstrong agreed to return to the Church all materials in his possession which pertained to the Church or the Scientology faith and in 7(F), Armstrong agreed never again to seek or obtain Scientology counseling or training. The Church made no promise to return documents to Armstrong, nor did it promise to limit its spiritual activities. In paragraph 7(D), Armstrong agreed not to publish any statements or discuss with others "their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above." Armstrong also agreed in that paragraph that he "will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above." The Church made no such promise not to divulge information about itself, nor did it make any promise not to divulge information about Armstrong. This provision, like those that surround it, was plainly intended as a promise from Armstrong to the Church.[3]

Fifth, Armstrong argues that the Court should create a term in the Agreement binding the Church to silence about him because he thought all along that the Agreement so bound the Church. Not only is Armstrong's claimed mistake of fact irrelevant,[4] but it directly contradicts two of his own earlier sworn statements in this action. When he opposed the Church's motion for preliminary injunction, Armstrong argued vigorously that paragraph 7(D) (which he now claims he thought all along bound both himself and the Church to silence) was not enforceable by the Church against him because it was not mutual. In Armstrong's own words, "**Paragraph 7D prohibited Armstrong from speaking to others about Scientology, but does not prohibit Scientology from talking to others about Armstrong.**" [Ex. D to Separate Statement, p. 50:25-27] In deposition in this action, he asserted that he was angry with his former lawyer, Flynn, because the Agreement which he signed "says on its face they can continue to attack you with impunity, Mr. Armstrong." [Ex. B to Separate Statement, 160:2-15] It is well-established in California that a party may not by affidavit or declaration contradict his earlier sworn testimony in order to create a factual issue and thereby avoid summary adjudication.

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[3] It should be noted here that the parties had no difficulty drafting promises that or conditions that were mutual when appropriate. For example, paragraph 12 provides that all parties will bear their respective costs with respect to the negotiation and drafting of the Agreement, while paragraph 11 acknowledges that all parties entered into the Agreement freely and carefully read and understood the Agreement before signing. The parties were thus fully capable of drafting mutual clauses when they intended the clauses to be mutual.

[4] The Code and cases are clear that "if the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the **promisor** believed, at the time of making it, that the promisee understood it." Civil Code Section 1649; Western Camps, Inc. v. Riverway Ranch Enterprises (1977) 70 Cal.App.3d 714, 725, 138 Cal.Rptr 918. Here, Armstrong (the proposed "promisee") assured the Church (the alleged "promisor") at the time that he signed (continued...)

> Admissions against interest have high credibility value, particularly when, as here, they are made in the context of proceedings designed to elicit the facts. "Accordingly, when such an admission becomes relevant to the determination, on motion for summary judgment, of whether or not there exist triable issues of fact (as opposed to legal issues) between the parties, it is entitled to and should receive a kind of deference not normally accorded evidentiary allegations in affidavits." After-the-fact attempts to reverse prior admissions are impermissible because a party cannot rely on contradictions in his own testimony to create a triable issue of fact. The assertion of facts contrary to prior testimony does not constitute "'substantial evidence of the existence of a triable issue of fact.'"

Thompson v. Williams (1989) 211 Cal.App.3d 566, 573-574. (citations omitted). Armstrong's current protestations that he really thought all along that the confidentiality provision of paragraph 7(D) was mutual thus may not be used by Armstrong to avoid summary adjudication. He is bound by his own earlier argument

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[4](...continued)
the Agreement that he fully understood the Agreement, and that he understood that, as consideration for his promises, the only thing which he would receive was the money that the Church was to pay to his lawyer, Michael Flynn. The Church believed him. [Ex. A and B to Ex. A, Declaration of Lawrence Heller.]

and sworn testimony that the clause was not mutual.[5]

Finally, Armstrong argues that the covenant of good faith and fair dealing requires this Court to re-write the contract, and impose on the Church a duty which the Church sought only to impose on Armstrong. However, to infer a new such covenant would clearly prevent the Church from achieving some of the expressed benefits of the Agreement to which it was entitled: e.g., the right to continue to litigate the appeal of its action against Armstrong. [Agreement, ¶4B.] Implying such a clause would be a misapplication of the good faith and fair dealing doctrine, Gerlund v. Electronic Dispensers International, supra, 190 Cal.App.3d at 277 (Reversing trial court for permitting jury an opportunity to apply an implied covenant of good faith and fair dealing, because "No obligation can be implied . . . which would result in the obliteration of a right expressly given under a written contract. 'There cannot be a valid express contract and an implied contract, each embracing the same subject, but requiring different results.'")

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[5] The only other evidence which Armstrong has submitted in support of his contention that the parties actually intended that the Church would refrain from making any comments to any third parties concerning Armstrong is a declaration of Lawrence Heller, one of plaintiff's attorneys, dated November _, 1989. [Exhibit P to Armstrong's declaration] Armstrong contends that the declaration supports his alleged "understanding" that the parties intended the confidentiality provisions of paragraph 7 to be mutual [Oppo. at 1-2.] In reality, the declaration of Mr. Heller states only that the parties all agreed not to disclose the contents of the Agreement or the underlying facts of the case being settled, and that this non-disclosure provision was "the one issue which was not debated by any of the parties or attorneys involved." [Ex. P to Armstrong Declaration, ¶¶ 3 and 4.] Heller's declaration does not contradict the written Agreement at all: the Agreement provides in paragraph 18(D) that, "The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety."

Nor does Heller's declaration contradict or create an ambiguity in paragraph 7(D), the paragraph which Armstrong wishes to rewrite. If Heller's declaration is to be believed, it is that none of the parties -- including Armstrong -- and none of the attorneys -- including Armstrong's three lawyers -- debated the provision, but adopted it as it plainly reads.

III. THE SECOND CAUSE OF ACTION FOR ABUSE OF PROCESS MUST BE DISMISSED

The Church established in its moving papers that the second cause of action for abuse of process is inadequate because: (1) the alleged pre-July 22, 1991 conduct is precluded by the one-year statute of limitations; and (2) the alleged post-July 22, 1991 conduct is either (a) privileged pursuant to Civil Code Section 47(2) and/or (b) does not involve the use of "process" for an "ulterior purpose." In his opposition, Armstrong complains that the maintenance of this action by the Church for abuse of process was a "continuing tort" which "tolled the statute of limitations," and rendered every other remote claim made in the cross-complaint actionable years after it supposedly occurred. Such an argument simply attempts to piggyback one failed claim on top of another. California law does not recognize Armstrong's continuing tort theory. Moreover, it is black letter California law that:

> [W]hile a defendant's act of improperly instituting or maintaining an action may, in an appropriate case, give rise to a cause of action for malicious prosecution, the mere filing or maintaining of a lawsuit -- even for an improper purpose -- is not a proper basis for an abuse of process action.

Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc. (1986) 42 Cal.3d 1157.

Armstrong's abuse of process argument devolves to a contention that the Church should be unable to enforce the Agreement because, allegedly at the Church's instigation, Armstrong's lawyer gave him bad advice in 1986. If Armstrong had ever had a claim for abuse of process against the Church arising out of the Church's negotiations with his lawyer in 1986, it has been non-actionable for nearly seven years. However, even if the statements alleged were made by a Church representative or by Armstrong's counsel (something for which Armstrong has advanced no competent evidence whatsoever) and the statute was somehow tolled, all Armstrong has managed to allege is that the Church wronged him during settlement negotiations by persuading his lawyer to persuade him to accept a bargain which he would now like to repudiate. The statements of attorneys and parties made during settlement negotiations are privileged pursuant to CC 47(b). Rubin v. Green (1993) 4 Cal.4th 1187, 1194. Further, Armstrong's assertions that his attorney guided him into an unenforceable contract are nonsense. Every court which has considered the merits of the Agreement thus far has upheld the Church's right to enforce the Agreement, including the Second District Court of Appeal [Sep.St.No. 32]. No abuse of process claim can arise out of the Church's pursuit of this action as a matter of law.

Recently, Armstrong brought a substantially similar cross-claim against the Church in Marin County. When the Church demurred, Armstrong made the same confused arguments that he has made here. The Court in Marin upheld the privilege, and also ordered stricken all of the allegations which Armstrong made concerning conduct that was beyond the statute of limitations. [Ex. B, Second Amended Cross-complaint; Ex. C, Demurrer; Ex. D, Opposition to Demurrer; Ex. E, Order.] Just as the Marin court found that no issue of fact existed as to most of Armstrong's claims of abuse of process, this Court must find that Armstrong's claims here are non-actionable vitriol, interjected into these proceedings to create havoc with the progress of this case toward its final resolution.

V. CONCLUSION

For all of the foregoing reasons, the Church requests that this Court grant its motion for summary adjudication.

Dated: July 26, 1994

Respectfully submitted,

BOWLES & MOXON

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CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	Case No. 152229 DECLARATION OF LAWRENCE E. HELLER

I, LAWRENCE E. HELLER, hereby declare:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and am a partner in the law firm of Turner, Gerstenfeld, Wilk & Tigerman. I have personal knowledge of the matters set forth below, and if called upon to do so, could and would competently testify thereto.

2. In 1986 I assisted various Churches of Scientology to achieve the settlement of a series of lawsuits with attorney

Michael J. Flynn and a several other attorneys around the country, who represented a number of plaintiffs and witnesses against those Churches of Scientology. Gerald Armstrong was one of these plaintiffs.

3. To finalize this settlement with Armstrong, I met with Mr. Armstrong and his attorney, Michael Flynn, in Los Angeles on December 6, 1986. I was present when Mr. Armstrong, in the presence of his attorney signed the Settlement Agreement with the Church of Scientology International. This meeting and signing was video taped.

4. Attached as Exhibit A to this Declaration is a copy of the video tape made at that meeting. I have reviewed this tape and state that it accurately depicts all of the events of that meeting.

5. Attached as Exbit B is a copy of the transcript of that video tape. I have reviewed this transcript against the video, itself, and state that it is an accurate transcription of the video.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of March, 1992, at Los Angeles, California.

L E Heller

Lawrence E. Heller

Exhibit A

EXHIBIT A TO THE DECLARATION OF LAWRENCE HELLER, THE VIDEO TAPE OF THE SETTLEMENT SIGNING, HAS BEEN LODGED SEPARATELY WITH THE COURT

Exhibit B

TRANSCRIPT OF GERALD ARMSTRONG VIDEO RECORDING OF SETTLEMENT AGREEMENT SIGNING

Appearances: December 6, 1986

LH: Larry Heller

GA: Gerald Armstrong

MF: Michael Flynn

JR: Jo Ann Richardson (Notary)

MS: Michael Sutter (Witness)

BEGINNING OF TAPE

LH This is fine, that covers everything and um, we're alright.

MF How many you got there?

LH Well I got the two affidavits for, then I got these here which, um, we don't have to sign these on video tape - we can do it if you like...

MF It makes no difference to me.

LH It's all the same to me too...

LH OK. It's now 9:04, ah, pm on December 6 1986 and to my left is Gerald Armstrong and next to him Michael J. Flynn. Um, Mr. Armstrong, I understand Mr. Flynn is your attorney here representing you today, is that correct?

GA Right.

LH OK. Ah, Mr. Armstrong I'm going to ask you to sign three documents, ah, a mutual release of all claims and settlement agreement, and two separate affidavits. Prior to doing so however, I would like to ask you some questions with regard to those documents, um-hum, excuse me, which I would like you to answer freely and honestly if you would. Ah, first of all have you had a chance to, ah, completely and comprehensively review and read these documents?

GA Yeah.

LH OK. Have you had a chance to discuss these documents with your attorney, Mr. Flynn?

GA Yes.

LH Has Mr. Flynn explained these documents as well the legal and factual ramifications to you, legal and practical ramifications to you to your satisfaction?

GA Uh, I think so, yes.

LH OK. Well do you have any question of that whatsoever?

GA No, I have no current questions about it.

LH OK, very good. You are going to sign these of your own free will?

GA Yes.

LH OK. You are not suffering from any duress or coercion which is compelling you to sign these documents?

GA No.

LH Alright, you are not presently under the influence of alcohol or any medication, prescription or otherwise, which would impede your ability to comprehend the um, legal and factual intent of these documents?

GA No.

LH Um, you may have noticed in reviewing the settlement agreement that, ah, you are part of a what we have generically described as a universal settlement, ah, what I mean by that is and you probably know that independently as well, as you're smiling. What I mean by that...

GA ... no, just that, that's the same as a global settlement, right?

LH It's the same thing. Exactly.

GA Got it.

LH I said generically described so far, universal, global, all encompassing - whatever you like, but the intent of it is that, um, you are one of many claimants uh, who uh, contend that they have claims against the Church of Scientology as well as related and unrelated entities and individuals. Some of those claimants have litigation such as you do pending against the Church of Scientology, some of them don't.

Uh, as you also may or may not know, uh, one lump sum payment is being made to Mr. Flynn. Um, Mr. Flynn is then going to be distributing from that lump sum certain sums to some or all of these claimants...

MF After I go to Rio.

LH After he goes to Rio, exactly. Neither I nor my clients know what the nature or amount that that distribution is um, and we don't want to know. Uh, what's important to us is that you realize that it's a universal/global settlement; that you realize that you are getting paid a certain amount out of that settlement, if you in fact are, and I'm making the assumption you are, but that, uh, and also that you tell me while we're now on video tape that you are happy and satisfied with the amount that Mr. Flynn has promised to pay you.

(phone rings and is answered)

GA Yes.

LH OK, now, other than any representations which Mr. Flynn has made to you in order to uh, get you to sign this uh, have any other representations been made by either myself or my clients or anything else which has compelled you to sign these documents?

Now, what I'm saying to you is there are obviously representations in the documents...

GA Correct.

LH Mr. Flynn has spoken with you - he has said you will get this and that for the, uh, whether money or other consideration for the signing of these documents...

GA Right.

LH OK, now I want to make sure that were there any other representations made to you of anything you would get in consideration for the signing of these documents.

GA Not in terms of what I would get: no.

LH OK. Along those same lines - As I said this is a universal settlement - ah, accordingly, ah, it is possible that some of the other parties may not settle for some reason, and I want you to be aware of the fact that if in fact one of those other, one or more of those other parties do not settle, this settlement falls through. You're aware of that?

GA OK.

LH OK, and you're also aware of the fact however that we are putting these in what is in effect an escrow account - these documents and this video tape - an escrow, um, sort of holding place, uh, so that all of these documents in the video tape will be destroyed if the, uh, settlement does not go through. And you're aware of all that? ...OK?

GA Um-hum.

LH OK, uh, with that then why don't we take a picture of the mutual release of all claims and settlement agreement and then I'll ask you to sign it.

...zoom to document...

LH OK, now what I'm going to ask you to do is please is to initial each of the bottom of each of these pages, I'll turn the page for you and then you'll sign it, I think in two different places if you would.

...GA initials the document...

MF Oh you've got a signature there, Lar.

LH Oh, I'm sorry...that's right...right up here.

...GA continues to initial and sign the document...

LH OK and if you'd date and sign there please.

...GA signs the document...

MF You didn't want to eat dinner with any of those people anyway.

LH No, what did I want to go out to dinner for. Is that crazy? OK, let's see, if you give it to Mr. Flynn, he'll sign it ... and you'll take two separate pictures of these Ted.

...zoom into document...

MF Little art work?

GA I think it...I think we have to, seeing as that's how the checks are.

LH OK and I've just taken a picture of this affidavit and asked that you initial at the bottom of the pages and then sign it once you get your pen back.

...GA signs document...

MF (Laughs)

LH OK, and here is the second affidavit...

...zoom into document...

LH OK.

...GA signs document...

MF How do you do that so quickly? That's awesome.

LH Um... OK, do you have any sort of identification on you so we can give it to the notary?

GA Sure.

LH So she can notarize your documents.

GA We haven't met before, have we?

JR No.

LH Why don't I have you sign...

LH Uh, I don't think we need to take a picture of this, this is the stipulated sealing order but you know what, all of these are for Bruce Bunch's signature I think...

MF Oh, are they...

LH Because...

MF Should we get Bruce donw here at some point?

LH Well...

MF Bruce is in trial I think...

GA Yeah, he is.

MF Yeah, whatever, we can get Bruce back down here. He's in the middle of a trial...

LH I think I'd want either Bruce or Julia's signature on this.

MF Julia would probably be easier...

LH Yeah...

MF Cause Bruce is in the middle of a trial.

LH Well we can arrange for that, that shouldn't be a problem...

MF Well she's coming Monday to do hers...right?

LH Exactly, um, ok, I noticed by the way, in this stipulation for return of sealed materials, it also has Mr. Armstrong's signature and your signature on it so...Let's take a picture of that.

...zoom into document...

LH And have you had a chance to read this yet Mr. Armstrong?

GA Yeah.

LH OK...alright... would you date and sign that please.

GA I keep thinking it's '85.

LH It's a good way...certainly...not to confuse your signature...

GA No.

LH ...Because Mr. Armstrong is, um, putting a face on his signature.

GA Makes it valuable.

LH Exactly.

MF It's awesome...as opposed to my ugly scrawl.

LH You probably have the same artistic talent that I have, which is...

MF Mine is zero.

LH Zero to none. OK, and I think that's it. Thank you Ted. Oh OK, or do you have any questions?

GA No, no

MF Those are orders...

LH These are orders which will be signed by the attorneys which will relate to sealing the files so that no one can get into them as well dismissing your actions. Those will be signed when the entire settlement is finished, um, and then given to the court for Judge Breckenridge's signature.

GA OK...

LH OK.

MF We should put how many docs we got...

GA Do you need duplicate sets signed? Or is that...

MF No, no there's only one...

LH No.

...counting documents...

MF 1-2-3-4 here.

LH OK, I've got two here which is six and then there's two affidavits which is eight.

LH OK, and if you got a drivers license or...

GA Right here.

JR He gave it to me...

LH Already got it?

GA Yeah.

JR You need to put your signature there and your address there please.

LH So you had a good time today?

MF Oh yeah, we had an excellent time, it was very pleasant and we had a nice plane ride up - nice plane ride back...

LH Well Michael's good company.

MF Nice visit with ah...yeah, Mike's very good company... nice, pleasant...

LH I've flown with him once or twice myself.

MF Yeah.

LH The trouble with me, he ususally sleeps. I'm not sure why that is.

MF No, we didn't sleep, (laughs).

MF Witnesses, we need witnesses with some of these docs.

LH Uh, no I think there was a one...that's right.

MF ...several are needed...

LH ...well, just, no only...

MF ...just the release.

LH Only the ah, mutual release...did I see a witness signature there? And there were... you know let's get Ted back - As a matter of fact Ted, why don't you roll this again because we're going to have witnesses sign. Thanks for reminding me.

MS Should Ted be a witness?

LH Oh, you two were witnesses so far... OK, we're back on the camera - 9:15 - and I neglected to get witnesses signatures on the uh, mutual release of all claims and settlement agreement so why don't I do that right now.

...Witnesses sign...

MS Just the one?

LH Okee-dokee, yup, and those are affidavits. Will you stamp them? Thanks Ted. Allright, so...we want to put up all this down in the vault...

MF This all goes together.

LH ...and you've marked that stuff for Michael Hertzberg.

MF Yeah. All marked.

END OF TAPE

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Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; et al,

Defendants.

GERALD ARMSTRONG,

Cross-Complainant,

-vs-

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California Corporation; DAVID MISCAVIGE; DOES 1 to 100;

Cross-Defendant.

No. **157 680**

SECOND AMENDED VERIFIED CROSS-COMPLAINT FOR ABUSE OF PROCESS

Date: April 15, 1994
Time:
Dept: One
Trail Date: 9/29/94

Cross-Complainant GERALD ARMSTRONG alleges as follows:

PARTIES

1. Cross-Complainant GERALD ARMSTRONG, hereinafter, "ARMSTRONG," is a resident of Marin County, California.

2. Cross-Defendant CHURCH OF SCIENTOLOGY INTERNATIONAL, hereinafter "CSI" or is a corporation organized and existing under the laws of the State of California, having principal offices and places of business in California and doing business within the State of California within the territorial jurisdiction of this Court.

3. Cross-Defendant DAVID MISCAVIGE, hereinafter "MISCAVIGE," is an individual domiciled in the State of California.

4. At all times herein mentioned, each Cross-Defendant was the agent, employee or coconspirator of each of the remaining Cross-Defendants, and in doing the things herein mentioned, each Cross-Defendant was acting within the course and scope of its employment and authority as such agent and/or representative and/or employee and/or coconspirator, and with the consent of the remaining Cross-Defendants.

5. CSI is subject to a unity of control, and the its corporate structure was created as an attempt to avoid payment of taxes and civil judgments and to confuse courts and those seeking redress for these Cross-Defendants' acts. Due to the unity of personnel, commingling of assets, and commonality of business objectives, these Cross-Defendants' attempts at separation of these corporations should be disregarded.

6. The designation of CSI as a "church" or religious entity is a sham contrived to exploit the protection of the First

Amendment of the United States Constitution and to justify their criminal, and tortious acts against ARMSTRONG and others. Cross-Defendant corporation is part of an international, money-making, criminally motivated enterprise which subjugates and exploits its employees and customers with coercive psychological techniques, threat of violence and blackmail. CSI and other Scientology corporate entities act as one organization.

7. David Miscavige controls and operates Scientology and uses it to enforce his orders and carry out his attacks on groups, agencies or individuals, including the acts against ARMSTRONG alleged herein to the extent there is no separate identity between Miscavige and CSI and any claim of such separate identity should be disregarded.

8. Cross-Defendants DOES 1 through 100, inclusive, are sued herein under such fictitious names for the reason that the true names and capacities of said Cross-Defendants are unknown to ARMSTRONG at this time; that when the true names and capacities of said Cross-Defendants are ascertained ARMSTRONG will ask leave of Court to amend this Cross-Complaint to insert the true names and capacities of said fictitiously named Cross-Defendants, together with any additional allegations that may be necessary in regard thereto; that each of said fictitiously named Cross-Defendants claim that ARMSTRONG has a legal obligation to Cross-Defendants by virtue of the facts set forth below; that each of said fictitiously named Cross-Defendants is in some manner legally responsible for the acts and occurrences hereinafter alleged.

9. Armstrong was a Scientologist from 1969 until mid-December, 1981. He was drawn into Scientology by representations

made by the organization and its founder L. Ron Hubbard ("Hubbard") about his history, achievements, credentials, character and intentions, and the history, credentials, character and intentions of his organization.

10. Throughout his years in Scientology, Armstrong remained dedicated to the accomplishment of its claimed and widely publicized "aims":

> "A civilization without insanity, without criminals and without war, where the able can prosper and honest beings can have rights, and where man is free to rise to greater heights".

11. From 1971 Armstrong was a member of the Sea Organization, Scientology's highest administrative echelon which controlled all lower organizations internationally without regard for corporate formality. Sea Organization members have an unconditional reverence for the words of Hubbard, whether true or false, and may not, on penalty of severe punishment, question the truth or falsity of his words.

12. Armstrong held several Sea Organization staff positions including legal officer, public relations officer and intelligence officer. He worked personally for Hubbard as a communications aide and in his household staff. Armstrong gained a knowledge of organization structure, control, policies and orders. He gained a knowledge of organization policies and practices regarding "ethics," its system of discipline and punishment, including its ultimate sanction, "fair game," whereby a person who was labelled a "suppressive person" or "enemy":

> "May be deprived of property or injured by any

means by any Scientologist without discipline of the Scientologist. May be tricked, sued or lied to or destroyed."

13. At the beginning of 1980 leaders at Sea Organization headquarters at Gilman Hotsprings, California, in anticipation of a raid by law enforcement agencies, ordered a massive shredding of evidence showing Hubbard's control of the organization. In the course of the shredding operation Armstrong discovered several boxes containing Hubbard's personal documentary records. Armstrong petitioned Hubbard to assemble these documents and to search for more personal records to form an archive to be used to create a Hubbard biography. Hubbard approved the petition.

14. During his assembly and study of Hubbard's records Armstrong discovered that an alarming number of the organization's and Hubbard's representations about Hubbard's history, achievements, credentials, character and intentions were without basis in fact and, indeed, false ("the misrepresentations"). Armstrong brought these discoveries to the attention of organization executives responsible for publications in the hope of bringing the misrepresentations that Scientology systematically disseminated to Scientologists and the world at large into conformity with the truth.

15. The response of the organization's leaders to Armstrong's attempt to correct the misrepresentations being disseminated was to label him a security risk and order him to a "security check," an accusatory interrogation using Scientology's electro-psychometer (E-meter) as a lie detector. Armstrong concluded that Hubbard and his organization's leaders did not

sincerely seek to accomplish Scientology's stated "aims" but sought unimpeded domination and the acquisition of wealth at the expense of honesty and freedom, to the detriment of their followers, and to the peril of their perceived opponents. Armstrong came to the realization that Hubbard and his organization were dishonest and violent, causing him to terminate his affiliation with them.

16. Shortly after Armstrong left the organization it published two "Suppressive Person Declares," naming him a "suppressive person," accusing him of falsely of "crimes" and "high crimes," and thus making him "fair game."

17. To protect himself following the publication of the "suppressive persons declares," Armstrong obtained copies of documents showing that Hubbard's and the organization's representations concerning their history, achievements, credentials, character and intentions were false.

18. On August 2, 1982 the Scientology organization sued Armstrong for conversion of the subject documents in a case captioned Church of Scientology of California and Mary Sue Hubbard v. Gerald Armstrong, Los Angeles Superior Court case No. C 420153 ("Armstrong I"). Armstrong retained Boston, Massachusetts attorney Michael Flynn ("Flynn") and the Woodland Hills, California law firm of Contos & Bunch, to represent Armstrong against the organization.

19. Armstrong filed a cross-complaint for fraud, breach of contract and intentional infliction of emotional distress. The cross-complaint was bifurcated from the underlying document case which was tried by Judge Paul G. Breckenridge, Jr. in the spring

of 1984.

20. Following a 30-day trial, on June, 20, 1984 Judge Breckenridge rendered a decision in favor of Armstrong which held that Hubbard and his organization were antisocial in nature and condemned its practices. He wrote:

> "In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the [organization] whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background and achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile."

21. From 1979 Flynn was responsible for much litigation vindicating the rights of individuals injured by Scientology.

In a set of cases in Federal Court in Boston, Massachusetts Flynn represented Lucy Garritano, Steven Garritano, Peter Graves, Kim Vashel Hankins, Majorie Hansen, Janet Troy Labanara and Michael Smith.

In a set of cases in Federal Court in Tampa, Florida, Flynn represented former mayor of Clearwater, Gabriel Cazares, Nan and John McLean, Tonja Burden and Margery Wakefield.

In cases pending in Los Angeles, California Flynn represented, among others, former organization executives Laurel Sullivan ("Sullivan"), William Franks ("Franks"), Howard Schomer ("Schomer"), Edward Walters ("Walters") and Martin Samuels ("Samuels"), all organization contemporaries of Armstrong.

22. From the time Flynn began representing individuals and entities in litigations with Scientology the organization labelled him an "enemy" and subjected him to a campaign of "fair game." Acts against Flynn pursuant to the "fair game doctrine" included more than a dozen lawsuits, frivolous bar complaints, theft of records, infiltration of his office, illegal electronic surveillance, defamation, framing with crimes, and attempted assassination. Flynn also brought a lawsuit against Scientology, captioned Michael J. Flynn v. Scientology, United States District Court, Central District of California, Case No. CV 850485-R, seeking damages for the years of fair game acts.

23. Flynn would ultimately settle all of the cases in each of the foregoing three blocks when given a large sum of money by Scientology to make such cases "go away."

24. In the first half of 1986 plaintiff's attorney Charles O'Reilly tried the case of Larry Wollersheim v. Church of Scientology of California, Los Angeles Superior Court Case No. C 332827. After a 95-day trial, the jury awarded a verdict in Wollersheim's behalf in the amount of $30,000,000.00.

25. At this time, Armstrong's cross-complaint, seeking damages for Scientology's "fair game" conduct was set for trial at

the beginning of 1987. This conduct included assault, harassment, attempted framing of Armstrong in an alleged plot to "take over" Scientology, filing false criminal charges with the Los Angeles District Attorney, filing false criminal charges with the Boston office of the FBI, filing false declarations, bringing contempt of court proceedings on three occasions based on false charges, making false accusations in internationally published media of crimes including crimes against humanity, and culling and disseminating information from Armstrong's supposedly confidential auditing (psychotherapy) files.

26. I am informed and believe and allege thereon that during 1986 organization leaders contacted Flynn, offered to discontinue its fair game operations against him and offered him a lump sum of money of several million dollars to settle all the Scientology cases in which he had a role, including his own case, if he would get all the litigants, which included Armstrong, Schomer and Samuels, or claimants, which included Sullivan, Franks and Walters, to sign organization-prepared settlement contracts. In promising the payment of a lump sum to Flynn without specifying what amount was to be applied in settlement of what claims Scientology made Flynn its agent in opposition to the interests of his clients.

27. Flynn had multiple conflicts of interest with his Scientology litigation clients which he failed to disclose, and otherwise failed to insure that said clients received proper unconflicted representation. I am informed and believe and allege thereon that he dealt with them separately and threatened that if such persons refused to settle, he would abandon such persons as

their lawyer in addition to causing the unavailability of certain critical witnesses. He represented, moreover, that the settlement agreements were legally unenforceable.

28. The cases in which Flynn had a role settled in three main blocks. The first block to settle was the Boston cases, the second block was the Florida cases, and third was the Los Angeles cases which settled in December, 1986 in Los Angeles and included among approximately 15 plaintiffs or claimants Armstrong, Sullivan, Franks, Schomer, Walters and Samuels.

29. Sullivan had been a long-time Sea Organization member, Hubbard's personal public relations officer for many years, and had played a key part in the corporate restructuring of the organization in order to insulate top management from civil and criminal liability. She testified in the Armstrong I trial, the Wollersheim trial, and the 1985 trial of Julie Christofferson v. Scientology, Circuit Court of the State of Oregon, Multnomah County, No. A7704-05184, in which the jury had awarded a verdict in Christofferson's behalf in the amount of $39,000,000.00.

30. Franks had been a long-time Sea Organization member, the organization's Executive Director International, and had knowledge of organization covert intelligence operations and finances. He had testified in the Christofferson and Wollersheim trials.

31. Schomer had been a long-time Sea Organization member, in charge of Hubbard's finances and responsible for transferring Scientology charitable corporation funds to Hubbard's personal accounts. He had testified in the Armstrong I and Christofferson trials.

32. Walters had been a long-time Scientology auditor

(therapist) and a covert operative for the organization's Guardian Office, the name used until 1982 for its intelligence, legal and public relations bureaus when it became the Office of Special Affairs. Walters had testified in the Armstrong I, Christofferson and Wollersheim trials.

33. Samuels had been a long-time Scientology franchise holder and had knowledge of the organization's practice of training its litigation witnesses to lie. He testified in the Christofferson trial.

34. Armstrong had testified in the Armstrong I and Christofferson trials and in a Scientology-related custody case in London, England, and in another approximately twenty-five days in depositions in some twelve lawsuits.

35. I am informed and believe that each settlement contract contained provisions which called for complete silence regarding Scientology-related experiences, non-assistance to adverse parties, non-disclosure of settlement conditions, prohibition of sworn testimony and avoidance of service of process. Armstrong's settlement contract also contained provisions allowing the organization to appeal from the scathing language of the Breckenridge decision in Armstrong I and preventing Armstrong from opposing any appeals the organization might take. With respect to Scientology's appeal of the Breckenridge decision, Scientology and Flynn entered into two side agreements, undisclosed to Armstrong, which (1) limited any damages awarded on retrial to $25,000, and (2) guaranteed that Armstrong Scientology would indemnify Armstrong's obligation to pay such judgement, should Scientology obtain reversal of the appeal and prevail upon retrial of the

case. The settlement contract also required Armstrong to collude with Scientology with respect to obtaining certain documents that constituted evidence of a conspiracy among Scientology executives and their attorneys to cover up criminal activity and to commit frauds on the Internal Revenue Service and other governmental agencies litigated and reported in United States v. Zolin, Case No. CV 85-0440-HLH(Tx).

36. Armstrong contends that the foregoing provisions are designed and intended to suppress evidence and therefore constitute an obstruction of justice thereby rendering the settlement contract unenforceable and void as against public policy.

37. Flynn and the other attorneys representing Armstrong and other anti-organization litigants also signed contracts with Scientology which prohibited their representation of anyone including their former anti-organization clients in litigation against the organization.

38. Effects of the provisions of such settlement contracts were the stripping of the Flynn-represented parties of their First Amendment rights of Free Speech and the stripping of the public of the right to hear from first-hand sources the truth about Scientology so that there could be free competition in the marketplace of ideas.

39. An additional effect of said provisions binding, censoring, suppressing and restraining the Flynn-represented parties' rights to Free Speech was to create an opportunity for Scientology to disseminate manufactured falsehoods in the marketplace of ideas, to obtain an unfair advantage with respect

to adversaries in various pending and future litigation, and to control the availability of evidence harmful to it in future litigation.

40. The purpose of each of the aforementioned settlement contracts was to effectuate certain objectives, including but not limited to, the following:

a. Maximizing Scientology's ongoing assertion and claim that it is a bona fide religion;

b. Maximizing its opportunities to cover up its criminal activity, or obtain a First Amendment immunity from having to be accountable for the consequences of its conduct;

c. Slandering the reputation of Armstrong for truth and veracity in order to make Scientology's false claims about its nature and practices seem credible by putting Armstrong into a posture where Scientology could lie about Armstrong with impunity because if he spoke out about Scientology, it would sue him into silence based upon the settlement contract.

41. Following the December, 1986 settlement, Scientology continued to attack Armstrong pursuant to its "fair game doctrine." Its acts include, but are not limited to, publishing a false and unfavorable description of Armstrong's in a "dead agent" pack relating to writer and anti-Scientology litigant Bent Corydon; filing several affidavits in the case of Church of Scientology of California v. Russell Miller and Penguin Books Limited, case no. 6140 in the High Court of Justice in London England which falsely accused Armstrong of violations of court orders, and falsely labeled him "an admitted agent provocateur of the U.S. Federal Government"; and delivering copies of an edited

version of an illegally obtained 1984 videotape of Armstrong to the international media.

42. Scientology threatened Armstrong with lawsuits on six occasions if he did not obey its orders to not testify regarding Scientology's dark side, thus aiding and abetting its obstruction of justice in the Miller case, in the case of Bent Corydon v. Scientology, Los Angeles Superior Court No. C 694401, wherein Corydon had subpoenaed Armstrong as a witness, and in the case of Scientology v. Yanny, Los Angeles Superior Court No. C 690211. Scientology also threatened to release Armstrong's confidences, which it had stolen from a friend, if Armstrong did not assist the organization in preventing Corydon from gaining access to the Armstrong I court file.

43. In the fall of 1989, right after receiving a series of threats from organization attorney Lawrence Heller, Armstrong, who had not earlier responded to Scientology's post-settlement attacks, concluded that he was being used to obstruct justice and that he had a right and a duty to not obstruct justice.

44. In February, 1990 Armstrong petitioned the California Court of Appeal, Second District, Division Three, for permission to file a response in the appeal from the Breckenridge decision that Scientology had been able to maintain in the intervening years. The Court of Appeal granted Armstrong's petition and he filed a respondent's brief. On July 29, 1991 the Court of Appeal issued its opinion, Scientology v. Armstrong, (1991) 232 Cal.App. 3d 1060, 283 Cal.Rptr. 917, affirming the Breckenridge decision.

45. On October 3, 1991 Scientology filed a motion in Armstrong I to enforce the settlement contract against Armstrong,

claiming that the contract had been approved by Judge Breckenridge. On December 23, 1991 Judge Bruce R. Geernaert denied the motion, ruling that Judge Breckenridge had not been shown the contract. He also said:

> "[T]hat is ... one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms had I been asked to, even on the threat that, okay, the case is not settled. I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest."

46. Scientology's actual purpose in bringing said motion was to obstruct justice, suppress evidence, slander Armstrong;'s reputation, retaliate against him for exercising his rights, and to make an example of him so that knowledgeable witnesses who had been betrayed in the settlement with the organization would continue to be scared into silence.

47. On February 4, 1992 Scientology filed a lawsuit captioned Church of Scientology v. Gerald Armstrong, Marin Superior Court Case No. 152229 ("Armstrong II") claiming it was seeking liquidated damages for alleged contract breaches and asking for injunctive relief. The case was transferred to Los Angeles Superior Court and given Case No. BC 052395. On May 27, 1992 at a hearing on Scientology's motion for a preliminary injunction Judge Ronald M. Sohigian, who refused to enforce certain of the settlement contract's provisions regarding restraints on Armstrong's rights to Freedom of Speech, stated:

> "The information (Armstrong's experiences inside the Scientology organization) that's being suppressed in this case, however, is information about extremely blame-worthy behavior of [the Scientology organization] which nobody owns; it is information having to do with the behavior of a high degree of offensiveness and behavior which is meritorious in the extreme.
> It involves abusing people who are weak. It involves taking advantage of people who for one reason or another get themselves enmeshed in this extremist view in a way that makes them unable to resist it apparently. It involves using techniques of coercion."

Judge Sohigian did, however, prohibit Armstrong from voluntarily giving sworn testimony on behalf of private individual plaintiffs with contemplated or pending claims against Scientology or assisting such persons with his special knowledge of Scientology. Armstrong II is presently stayed pending the outcome of an appeal from the Sohigian ruling.

48. On July 8, 1993, after Armstrong II was stayed Scientology filed a lawsuit captioned Church of Scientology International v. Gerald Armstrong & The Gerald Armstrong Corporation, Los Angeles Superior Court Case No. BC 084642 ("Armstrong III") claiming again that it was seeking liquidated damages for alleged contract breaches and asking for injunctive relief. Armstrong III has also been stayed pending the outcome of the appeal from the Sohigian ruling.

49. On July 23, 1993, Scientology filed a lawsuit captioned Church of Scientology International v. Gerald Armstrong, Michael

Walton & The Gerald Armstrong Corporation, Marin Superior Court Case No. 157680 ("Armstrong IV") claiming to be a creditor of Armstrong and alleging a conspiracy to defraud it of liquidated damages it claimed were owed by Armstrong.

50. Scientology's actual purpose in filing and prosecuting Armstrong II, III and IV was to obstruct justice, suppress evidence, assassinate Armstrong's reputation, retaliate against him for exercising his rights, use the discovery process for gathering intelligence on its enemies, and to make an example of Armstrong so that knowledgeable witnesses who had been betrayed in the settlement with the organization would continue to be scared into silence.

51. Armstrong IV is a part of Scientology's use of litigation as war against its targeted "enemies" and our justice system itself. Scientology's tactics in its use of litigation as war include causing its opposition to do needless work, needlessly driving up costs to its opposition, ignoring the truth, senseless relitigation of already decided issues, perjury, destruction and hiding of evidence, intimidation of witnesses, intimidation of opposing counsel, and intimidation of judges.

52. Indeed, United States District Court Judge James M. Ideman wrote in a declaration he executed June 17, 1993 and filed in the United States Court of Appeals:

> "[Scientology] has recently begun to harass my former law clerk who assisted me on this case, even though she now lives in another city and has other legal employment. This action, in combination with other misconduct by counsel over the years has caused me to

> reassess my state of mind with respect to the propriety of my continuing to preside over the matter. I have concluded that I should not.
>
> [Scientology's] non-compliance (with Court orders) has consisted of evasions, misrepresentations, broken promises and lies, but ultimately with refusal. As part of this scheme to not comply [Scientology has] undertaken a massive campaign of filing every conceivable motion (and some unconceivable) (Judge Ideman's parens.) to disguise the true issues in these pretrial proceedings. Apparently viewing litigation as war, plaintiffs by this tactic have had the effect of massively increasing costs to the other parties, and, for a while, to the Court.
>
> Yet it is almost all puffery -- motions without merit or substance."

53. The Armstrong IV complaint, and all of Scientology's papers filed in the case, constitute an abuse of process because it is intended to support Scientology's strategy of retributive litigation in furtherance of its plan and scheme to obstruct justice and to suppress evidence by making an example of Armstrong in order to intimidate other persons who are knowledgeable about Scientology from coming forward and speaking the truth. Scientology's filing and litigation of Armstrong IV is in conformity with its express policy specifying the improper use of litigation. Said policy, in part, is stated as follows:

> "The purpose of the suit is to harass and discourage rather than to win. [¶] The law can be used very

easily to harass, and enough harassment on somebody who is simply on the thin edge anyway...will generally be sufficient to cause his professional decease. If possible, of course, ruin him utterly. "

FIRST CAUSE OF ACTION

(For Abuse of Process Against All Cross-Defendants)

54. Cross-complainant Armstrong realleges paragraphs 1 through 53, inclusive and incorporates them by reference herein as though fully set forth.

55. Cross-defendants, and each of them, have abused the process of this court in a wrongful manner, not proper in the regular conduct of proceedings, to accomplish purposes for which said proceedings were not designed, specifically obstruction of justice, suppression of evidence, assassination of Armstrong's reputation, retaliation against him for exercising his rights, gathering intelligence on its enemies, and making an example of Armstrong so that knowledgeable witnesses who had been betrayed in the settlement with the organization would continue to be scared into silence.

56. Cross-defendants, and each of them, acted in this litigation with an ulterior motive to obstruct justice, suppress evidence, assassinate Armstrong's reputation, retaliate against him for exercising his rights, use the discovery process for gathering intelligence on its enemies, and to make an example of Armstrong so that knowledgeable witnesses who had been betrayed in the settlement with the organization would continue to be scared into silence.

57. Defendants, and each of them, have abused the process of

this court in a wrongful manner, not proper in the regular conduct of the proceedings in Armstrong IV and in other litigation, to accomplish a purpose for which said proceedings were not designed, specifically, the suppression of evidence, the obstruction of justice, the assassination of cross-complainant's reputation, and retaliation against said cross-complainant for prevailing at trial in Armstrong I, and for continuing to publicly speak out on the subject of Scientology, all so as to be able to attack cross-complainant and prevent cross-complainant from being able to take any effective action to protect himself.

58. Defendants, and each of them, acted with an ulterior motive to suppress evidence, obstruct justice, assassinate cross-complainant's reputation, suppress ARMSTRONG's First Amendment rights, and to retaliate against cross-complainant in said litigation.

59. That defendants, and each of them, have committed willful acts of intimidation, threats, and submission of false and confidential documents not authorized by the process of litigation, and not proper in the regular conduct of litigation.

60. On February 19, 1992, shortly after Scientology filed Armstrong II, Armstrong's attorney therein, Ford Greene, wrote to Scientology's attorney, Laurie Bartilson, requesting that, for the purpose of Armstrong's defense, Scientology release Armstrong's former attorneys, Michael Flynn, Bruce Bunch and Julia Dragojevic, from contracts by which Scientology prohibited them, on threat of fair game, from assisting Armstrong against Scientology's charges. The assistance of said attorneys was necessary because each had represented Armstrong throughout the Armstrong I litigation and

had participated as Armstrong's agents in the 1986 settlement negotiations with Scientology which resulted in the subject settlement agreement Scientology sought to enforce in Armstrong II.

61. On February 24, 1992, Greene wrote to Bartilson, requesting that, for the purpose of Armstrong's defense, Scientology release the individuals, including Sullivan, Franks, Schomer, Walters and Samuels, who had signed Scientology's "settlement agreements" around the same time as Armstrong, from said agreements which prohibited them, on threat of fair game, from assisting Armstrong against Scientology's charges. The assistance of said individuals, all of whom had been represented by Flynn, was necessary because Scientology claimed in Armstrong II that they had each signed and agreed to settlement agreements substantially similar to Armstrong's; yet each had been advised by Flynn that the prohibitory clauses in said settlement agreements were unenforceable. Each witness would support Armstrong's defense that Scientology had obtained their signatures on said unenforceable contracts by subjecting them and their attorney to fair game. Releases were necessary as well because Armstrong did not have and does have any money to pay for service of deposition subpoenas, deposition transcripts and related travel costs for these witnesses, himself or his attorney.

62. On March 2, 1992 Bartilson wrote to Greene refusing to release either Armstrong's former attorneys or any of the "settling" individuals, including Sullivan, Franks, Schomer, Walters and Samuels, from the contracts by which Scientology prevented them from assisting Armstrong.

63. On March 25, 1994 Judge Gary W. Thomas issued an order in Armstrong IV sustaining plaintiff's demurrer stating, inter alia, "As to the first cause of action for declaratory relief, cross complainant seeks a declaration of issues which will be determined in the Los Angeles Superior Court actions (enforceability of settlement contract) or in the underlying complaint (ability of plaintiff to recover under the Uniform Fraudulent Conveyance Act)."

64. On March 30, 1994 Greene wrote to Bartilson requesting that, for the purpose of Armstrong's defense in Armstrong IV, Scientology release Armstrong's former attorneys, Michael Flynn, Bruce Bunch and Julia Dragojevic, and the settling individuals, including Sullivan, Franks, Schomer, Walters and Samuels, from said contracts by which Scientology prohibited them, on threat of fair game, from assisting Armstrong against Scientology's charges in Armstrong IV. The assistance of said attorneys and individuals was necessary for the reasons set forth above in paragraphs 60 and 61.

65. On April 4, 1994 Bartilson wrote to Greene refusing to release either Armstrong's former attorneys or any of the "settling" individuals, including Sullivan, Franks, Schomer, Walters and Samuels, from the contracts by which Scientology prevented them from assisting Armstrong in the Armstrong IV litigation.

66. Without Scientology's specific release of witnesses with knowledge of the facts surrounding the settlement agreement on which Scientology bases Armstrong IV even subpoenaing said witnesses for deposition will not free them from Scientology's

fair game threat to provide honest testimony. Indeed Howard Schomer was so intimidated by Scientology's threats of litigation should he testify even pursuant to a subpoena that when he was subpoenaed to a deposition in the Corydon case in 1990 he allowed one of Scientology's own lawyers to represent him and altered his previous sworn testimony to suit Scientology.

67. Scientology's refusal to release of said attorneys and individuals, on whom Armstrong depends for his defense of Scientology's claims in the underlying complaint in Armstrong IV, to be able to freely testify by means of declaration or deposition, when coupled with Scientology's continual threat of fair game should any these knowledgeable attorneys or individuals testify, is a willful act in the use of the legal process not proper in the regular conduct of this or any proceeding in our justice system. Its purpose is obstruction of justice and destruction of evidence so as to gain an illicit advantage in the Armstrong IV litigation, as well as to needlessly to run up Armstrong's costs so as to crush him economically.

68. On August 3, 1993, shortly after filing the underlying Armstrong IV complaint, Scientology recorded a lis pendens on the real property situated in Marin County known as 707 Fawn Drive and owned by Michael and Solina Walton. Scientology was not entitled by law to record said lis pendens. Moreover, the value of the property encumbered by said lis pendens far exceeded the amount of Scientology's legitimate claim, which is zero. The Waltons made several requests of Scientology that it remove the improper lis pendens, and Scientology refused, forcing the Waltons to bring a motion for an order of expungement. The forcing of the Waltons to

bring a motion to achieve the expungement of the lis pendens to which Scientology was not entitled was a willful act improper in the regular conduct of the Armstrong IV proceeding, for the purposes of threatening Armstrong's friends, the Waltons, causing them problems and pushing up their costs in the litigation unnecessarily, so as to drive a wedge between the Waltons and Armstrong, to isolate Armstrong and to retaliate against him for exercising his rights by attacking his friends. Cost to the Waltons to obtain the expungement of said improper lis pendens is over $8000.00. On October 29, 1993 the Court ordered said lis pendens expunged and ordered Scientology to pay $3514.00 of the Waltons' costs by December 1, 1993, which orders Scientology did not appeal. As of this date Scientology has not paid this amount to the Waltons and continues to refuse to pay. Such refusal is a willful act for the illicit purposes of intimidation, causing the Waltons and Armstrong more trouble and pushing up the costs of this litigation even more.

69. On February 8, 1994, Scientology leader and cross-defendant herein David Miscavige executed a declaration which concerned Armstrong and which was filed in the case of Scientology v. Fishman & Geertz, United States District Court for the Central District of California Case No. CV 91-6425 HLH(Tx). In said declaration Miscavige falsely accused Armstrong of various acts relating to his experiences with Scientology prior to the 1986 settlement. On February 22 Armstrong executed a declaration for filing in the Fishman case to correct the falsehoods in Miscavige's declaration concerning his Scientology-related experiences. Prior to responding to the Miscavige declaration

Armstrong had executed no declaration for use in the Fishman case. On April 5, 1994, Scientology amended its complaint in Armstrong II to add a claim for $50,000.00 in liquidated damages for Armstrong's execution of February 22 declaration. Miscavige and Scientology filed the false declaration about Armstrong in Fishman to goad and lure him into responding to correct the record and then use his response to puff up the liquidated damages on which Scientology bases its claim of damages in Armstrong IV so as to be able to use that litigation as a vehicle to accomplish its actual purposes of obstruction of justice, suppression of evidence, assassination of Armstrong's reputation, retaliation against him for exercising his rights, use of the discovery process for gathering intelligence on its enemies, and making an example of Armstrong so that knowledgeable witnesses who had been betrayed in the settlement with the organization would continue to be scared into silence. All other liquidated damages claims on which Scientology bases Armstrong IV are similarly baseless and the result of Scientology's and Miscavige's own wrongful acts.

70. I am informed and believe and allege thereon that on or about March 30, 1994 Scientology, pursuant to L. Ron Hubbard's policies of fair game and "black propaganda," disseminated internationally a publication which defames Armstrong by falsely accusing him of crimes and perversions, impugns his character with falsehoods and innuendo, and purports to describe his pre-settlement experiences with the Scientology organization. I am informed and believe and allege thereon that the actual source of said publication is David Miscavige. One of the purposes of said publication is to goad or lure Armstrong into responding to clear

his name of Miscavige's and Scientology's lies. Scientology will then claim it is due liquidated damages in order to pad the claims on which it bases Armstrong IV. If Armstrong does not respond in order to refute Miscavige's and Scientology's lies and clear his name Miscavige and Scientology will claim that Armstrong, who himself received a copy of said publication in Scientology's international mailing, admits the truthfulness of said lies. The actual purposes of Scientology's willful act in disseminating said publication during the litigation of Armstrong IV are the assassination of Armstrong's reputation, retaliation against him for exercising his rights, and making an example of Armstrong so that knowledgeable witnesses who had been betrayed in the settlement with the organization would continue to be scared into silence. Said publication is a vehicle Scientology is using to improperly inject into the Armstrong IV litigation false statements about Armstrong which have no connection to or logical relation to the action and are not made to achieve the objects of that litigation. Said publication contains, moreover, a description of a document which was illegally obtained by Scientology, and which was specifically sealed by Judge Breckenridge in the Armstrong I litigation. Scientology's use of said document in violation of an order of the Los Angeles Superior Court to effectuate its injection into the Armstrong IV litigation for the purpose of assassinating Armstrong's reputation is a willful act improper in the regular conduct of this or any other proceeding.

71. Throughout the Armstrong IV litigation Scientology has made knowingly false and defamatory statements about Armstrong for

the purpose of assassinating his reputation, rather than to achieve the legitimate objects, if any, of the litigation. These include the lies that Armstrong has or had a history of fomenting litigation against Scientology, that for years he displayed an intense and abiding hatred for Scientology, and that he had extorted money from Scientology as the price of his signature on the subject settlement agreement. None of these statements is true and none are reasonably related to the objects of the Armstrong IV litigation, namely the setting aside of what Scientology alleges are fraudulent transfers by Armstrong.

72. While litigating Armstrong IV, which Scientology bases on Armstrong's alleged breaches of the 1986 settlement agreement, Scientology has itself refused to be bound by the same agreement. Scientology's refusal includes its unilateral rejection of the prevailing party fees and costs provision in paragraph 20 of the agreement. Since December, 1991 Scientology has owed Armstrong over $20,000.00 in fees and costs from his successful defense of Scientology's motion to enforce the settlement agreement in Armstrong I. Scientology continues to refuse to pay said fees and costs due and continues to reject its own prevailing party fees and costs settlement agreement provision, while prosecuting the baseless and costly Armstrong IV litigation. Said refusal to be bound by its own contract is an improper willful act for the purposes of intimidation, destroying Armstrong financially, retaliation against him for exercising his rights, and making an example of him so that knowledgeable witnesses who had been betrayed in the settlement with the organization would continue to be scared into silence.

73. Scientology bases all of its allegations relating to fraudulent conveyances in Armstrong IV solely on the deposition testimony of Armstrong and Walton in the Armstrong II litigation. Yet there is not one word in that testimony to support Scientology's allegations. Armstrong and Walton, on the other hand, have provided from the beginning of the Armstrong IV litigation overwhelming, detailed documentary proof of the non-fraudulent nature of all of Armstrong's conveyances Scientology claims it seeks in this action to set aside. In order to continue to prosecute Armstrong IV Scientology refuses to acknowledge this overwhelming proof. By refusing to acknowledge this proof and maintaining the charade of legitimacy in its allegations Scientology has through the discovery process in Armstrong IV obtained Armstrong's and Walton's personal and detailed financial records. The purposes for Scientology's use of the discovery process to obtain such records in this case are to feed its intelligence gathering apparatus, intimidation and retaliation. Faced as Scientology is with the fact that all of Armstrong's conveyances were non-fraudulent all of its acts in continuing to prosecute Armstrong IV constitute an ongoing abuse of process.

74. Throughout the Armstrong IV litigation Armstrong and Walton have made several attempts to get Scientology to meet and communicate for the purpose of resolving the action without further litigation and greater cost, and each attempt Scientology has refused to acknowledge. Armstrong and Walton have, moreover, made several requests that Scientology dismiss the litigation, and Scientology has refused each request. Having no basis in reality for the Armstrong IV complaint Scientology prosecutes this case

for improper purposes, and its acts in refusing to meet and communicate and refusing to dismiss the case constitute an abuse of process. Scientology's purpose in its refusals to resolve its meritless Armstrong IV case is to be able to maintain it as a vehicle for its actual and illicit motives: obstruct justice, destroy evidence, gain an unfair advantage in all of its litigations, feed its intelligence appetite, crush Armstrong economically, destroy him emotionally, assassinate his reputation, retaliate against him for daring to live his own life and stand up to Scientology's suppression, make an example of him as a message to anyone else who might dare to stand up to its suppression, and intimidate the legal community.

75. Cross-complainant has suffered damage, loss and harm, including but not limited to his reputation, his emotional tranquillity, and privacy.

76. That said damage, loss and harm was the proximate and legal result of the use of such legal process.

PRAYER

WHEREFORE, cross-complainant seeks relief as is hereinafter pleaded.

ON THE FIRST CAUSE OF ACTION

1. For general and compensatory damages according to proof.
2. For attorney's fees and costs of suit.
3. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: April 15, 1994 **HUB LAW OFFICES**

By:
FORD GREENE
Attorney for Defendant

VERIFICATION

I, the undersigned, am the cross-complainant in the above entitled action. I know the contents of the foregoing First Amended Cross-Complaint I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct according to the laws of the State of California and that this declaration was executed on the April 15, 1994 at San Anselmo, California.

By: ______________________
GERALD ARMSTRONG

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: FIRST VERIFIED AMENDED CROSS-COMPLAINT FOR ABUSE OF PROCESS

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

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[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: April 15, 1994

2644

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; et al.,

Defendants.

GERALD ARMSTRONG,

Cross-Complainant,

vs.

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California Corporation; DAVID MISCAVIGE; DOES 1 to 100;

Cross-Defendants.

CASE NO. 157 680

CHURCH OF SCIENTOLOGY INTERNATIONAL'S DEMURRER TO GERALD ARMSTRONG'S SECOND AMENDED CROSS-COMPLAINT

DATE: June 10, 1994
TIME: 9:00 a.m.
DEPT: 1

DISCOVERY CUT-OFF: None
MOTION CUT-OFF: None
TRIAL DATE: None

Plaintiff and cross-defendant, Church of Scientology International ("the Church"), demurs to the second amended cross-complaint of Gerald Armstrong on the following grounds:

1. The cross-complaint does not state facts sufficient to constitute a cause of action against the Church;

2. There is another action pending between the parties to this cross-complaint on the same cause of action as alleged in the cross-complaint. That action is the cross-complaint in Case No. BC 052395 in the Superior Court of Los Angeles County, and the Church asks that the Court take judicial notice of that action under Evidence Code Section 42(d). Certified copies of the Verified Amended Cross-Complaint and the Church's Answer to Verified Amended Cross-Complaint were previously provided to the Court as Exhibits 1 and 2 to the Church's Request for Judicial Notice filed on January 3, 1994.

DATED: May 20, 1994

BOWLES & MOXON

By: Laurie J. Bartilson

Laurie J. Bartilson

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiffs, vs. GERALD ARMSTRONG; MICHAEL WALTON; et al., Defendants.	CASE NO. 157 680 CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS DEMURRER TO GERALD ARMSTRONG'S SECOND AMENDED CROSS-COMPLAINT
GERALD ARMSTRONG, Cross-Complainant, vs. CHURCH OF SCIENTOLOGY INTERNATIONAL, a California Corporation; DAVID MISCAVIGE; DOES 1 to 100; Cross-Defendants.	DATE: June 10, 1994 TIME: 9:00 a.m. DEPT: 1 DISCOVERY CUT-OFF: None MOTION CUT-OFF: None TRIAL DATE: None

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I. INTRODUCTION

On April 4, 1994, this Court sustained the demurrer filed by plaintiff and cross-defendant Church of Scientology International ("the Church") and gave defendant and cross-complainant Gerald Armstrong [Armstrong] leave to amend his complaint for abuse of process "to state a cause of action, if he can." [Ex. 1 to Third Request for Judicial Notice, concurrently filed.] Armstrong's Second Amended Cross-complaint, an effort precisely reminiscent of his first two attempts, demonstrates that he is incapable of stating a viable cross-claim for abuse of process. The Church's demurrer should be sustained once again, this time with prejudice.

Armstrong's original and first amended cross-claims for abuse of process suffered from three essential flaws: they sought relief for alleged conduct which (1) predated the statute of limitations; (2) was already the subject of litigation between the parties in Los Angeles; and/or (3) was absolutely privileged. Armstrong's third attempt to state a claim for abuse of process suffers from these same flaws. Armstrong has added also added new allegations (aimed primarily at the Church's counsel) which do not even allege use of process at all. Further, Armstrong has made allegations which are demonstrably false, and which reference to this Court's own records show to be false. Armstrong's third attempt to amend his complaint thus has no merit, and its utter lack of merit would be apparent to any reasonable attorney. Plaintiff therefore requests that Armstrong and his attorney be sanctioned pursuant to Code of Civil Procedure Section 128.5 for bringing this frivolous, bad faith claim.

II. STATEMENT OF FACTS

On October 7, 1992, defendant Armstrong filed a cross-complaint in the Los Angeles action, Church of Scientology International v. Armstrong, Case No. BC 052395, Los Angeles Superior Court ("the First Cross-complaint"). [Ex. 2 to Request for Judicial Notice.] The First Cross-complaint consists of claims for abuse of process and declaratory relief.

On March 3, 1993, the Church filed a motion for summary adjudication of, inter alia, the cause of action for abuse of process which is duplicated by Armstrong in his cross-complaints in this action. [Exs. 4 - 5 to Request for Judicial Notice.] All activity in that action, including adjudication of the Church's pending motion, was stayed by the Los Angeles court on March 23, 1993, pending resolution of an appeal, taken by Armstrong, of the order of preliminary injunction which the Church had obtained in May, 1992. [Ex. 6 to Request for Judicial Notice, Minute Order.] The Court of Appeal has now affirmed the Church's injunction. [Ex. 7 to Request for Judicial Notice] Resolution of the Church's dispositive motion as to Armstrong's abuse of process claim should thus occur in short order.

Defendant Armstrong filed his initial cross-complaint in this action a year after the filing of the First Cross-complaint, on November 30, 1993 ("the Second Cross-complaint"). The Second Cross-complaint was a word-processing repetition of the First Cross-complaint, and also asserted a cause of action for abuse of process.[1]

On January 4, 1994, the Church demurred to the Second Cross-complaint, arguing, inter alia, that the Second Cross-complaint duplicated the abuse of process claim contained in the First Cross-complaint. Armstrong did not oppose the demurrer, although he had more than 6 weeks to do so. Instead, on February 17, 1994, one day before the demurrer was scheduled to be heard, Armstrong filed and served a first amended cross-complaint ("the Third Cross-complaint"). The Third Cross-complaint repeated Armstrong's claim for abuse of process, and added a second cause of action for declaratory relief.[2]

---

[1] As can be seen from a review of the First and Second Cross-complaints, both documents are rambling diatribes which allege conduct by "the ORG" (First Cross-Complaint) or "Scientology" (Second Cross-complaint). Most of the allegations concern actions which allegedly happened to non-parties, or which supposedly occurred many years ago. The First Cross-complaint contains 72 paragraphs. Sixty of those paragraphs have been duplicated in the Second Cross-complaint, modified only to accuse "Scientology" instead of the "ORG," to add a few phrases of irrelevant hyperbole and to delete references to previously named cross-defendants. The origin of each paragraph in the Second Cross-complaint and in the First Cross-complaint can be easily observed by directly comparing the two documents, with the following correlation. The list shows the identity of paragraphs by listing first, the paragraph in the First Cross-complaint and second, the identical paragraph in the Second Cross-complaint, as: "First Cross-complaint Paragraph Number: Second Cross-complaint Paragraph Number": 1:1; 2:2; 4:3; 6:4; 7:5; 8:6; 9:7; 12:8; 13:9; 14:10; 15:11; 16:12; 17:13; 18:14;19:15; 20:16; 21:17; 22:18; 23:19; 24:20; 25:21; 26:22; 27:23; 28:24; 29:25; 30:26; 31:27; 32:28; 33:29; 34:30; 35:31; 36:32; 37:33; 38:34; 39:35; 40:36; 41:37; 42:38; 43:39; 44:40; 45:41; 46:42; 47:43; 48:44; 49:45; 50:46; 51:47; 52:48; 53:49; 54:50; 55:51; 56:52; 57:53; 58:56; 64:57; 65:58; 66:59; 67:60; 68:61; 69:62. [Id.]

The only paragraphs which Armstrong did not duplicate from the First Cross-complaint consist of paragraphs identifying additional cross-defendants (e.g., ¶¶ 3, 5, 10, 11), none of whom were ever served, and paragraphs defining claims for declaratory relief and breach of contract (¶¶ 59 - 63, 70 - 72).

The Church demurred again, arguing that the Third Cross-complaint duplicated a prior action, was time-barred, and failed to allege any improper wilful act in the use of process, seeking relief instead for absolutely privileged conduct. This time, Armstrong opposed the demurrer. On April 4, 1994, this Court sustained the demurrer, finding, inter alia, that

> As to the second cause of action for abuse of process, cross-complainant fails to allege any "wilful act in the use of process not proper in the regular conduct of the proceeding." See Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc. (1986) 42 Cal.3d 1157, 1168. All of the allegations regarding plaintiff's pursuit of this litigation go to the first element of the cause of action "ulterior purpose." Id. Cross-complainant shall have 20 days' leave to amend to state a cause of action, if he can.

[Ex. 1, ¶3]. Demurrer was sustained without leave to amend as to the cause of action for declaratory relief. [Id. ¶2]

Armstrong's latest effort, the second amended cross-complaint ("the Fourth Cross-complaint") is no better than its earlier iterations. Armstrong begins by repeating, verbatim, allegations from the Third Cross-complaint which this Court has already held do not constitute abuse of process, and which describe actions that are either part of the First Cross-complaint, time-barred, or both.[3] In new paragraphs 62 - 74, Armstrong tries to assert that the following alleged conduct supports a claim for abuse of process:

---

[2] While the allegations are not identical in language, the subjects described are. The list shows the similarity of paragraphs by listing first, the paragraph in the First Cross-complaint and second, the paragraph describing the same claimed events in the Third Cross-complaint, as: "First Cross-complaint Paragraph Number: Third Cross-complaint Paragraph Number": 1:1; 2:2; 6:4; 7:5; 8:6; 12:8, 13:9 -12, 18-20; 14:21-23; 14-20:26-34; 24:37-40; 27:41; 30:42; 32-40:42; 41-42:43-44; 53:45-46; 54-56:47; 60-62:55(a); 65:57; 66:58, 60; 67:61; 68:62; 69:63.

1. Refusing to agree that other persons who entered into settlement agreements, like Armstrong's, which prohibited them from voluntarily assisting other litigants, need no longer be bound by their agreements [¶¶ 62 - 67];
2. Recording a lis pendens on the real property at issue in this action, and failing to pay a claimed award of attorneys' fees to a non-party because the lis pendens was allegedly expunged [¶ 68];
3. Filing a declaration mentioning Armstrong in another case, and "inducing" Armstrong to file a declaration in response [¶ 69];
4. Disseminating "internationally" an unidentified publication which supposedly defamed Armstrong [¶ 70];
5. Making "knowingly false and defamatory statements" about Armstrong in this litigation [¶ 71], and lacking evidence to support the claims made [¶ 73];
6. Owing him a debt, which he apparently claims arises out of the settlement agreement that he refuses honor, and

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[3] Plaintiff has separately moved to strike these allegations, ¶¶ 9 - 59, which newly repeat inflammatory evidentiary claims which can have no bearing on his claim for relief here.

not paying it [¶ 72]; and

7. Refusing to meet with him to discuss settlement of this action [¶ 74].

As demonstrated below, none of these allegations delineates a "wilful act in the use of process not proper in the regular conduct of [a] proceeding." Oren Royal Oaks, supra. Stripped of their inflammatory rhetoric, each of the allegations describes conduct which (1) is time-barred; (2) is privileged; and/or (3) does not use the process of the court at all.

III. DEMURRER MUST BE SUSTAINED AS TO ARMSTRONG'S CAUSE OF ACTION FOR ABUSE OF PROCESS

A. Demurrer Must Be Sustained Because Armstrong Has Not And Cannot Allege Facts Sufficient To State A Claim For Abuse Of Process

1. The Conduct Alleged To Have Occurred Before November 30, 1992 Is Precluded by the Statute of Limitations

The one-year statute of limitations pursuant to Code of Civil Procedure Section 340 applies to a cause of action for abuse of process. Thornton v. Rhoden (1966) 245 Cal.App.2d 80, 95, 53 Cal.Rptr. 706, 717. In Thornton, the plaintiff alleged that defendant had abused process by taking, transcribing and filing a deposition in which the defendant made false and defamatory claims. The deposition was taken and transcribed more than one year before the action for abuse of process was filed, and filed one year exactly before the filing of the abuse of process complaint. The Court of Appeal found that the alleged taking and transcribing of the deposition were beyond the statute, and could not be considered part of the plaintiff's abuse of process claim. Id.[4]

Here, alleged conduct which purportedly occurred prior to November 30, 1992 is similarly beyond the statute of limitations, and any abuse of process claim which could possibly attach to those claims (and the Church considers that none could) is time-barred. On the face of the Fourth Cross-complaint, the conduct alleged in paragraphs 9 through 46 and 60 through 62 is alleged to have occurred before November 30, 1992. Accordingly, the conduct alleged in those paragraphs is barred by the statute of limitations.

2. The Conduct Post-November 30, 1992 Cannot Be the Basis For An Abuse of Process Claim Because It Does Not Describe Use of Process And/or Is Privileged

To state a claim for abuse of process, a plaintiff must allege two elements: "first, an ulterior purpose, and second, a wilful act in the use of the process not proper in the regular conduct of the proceeding." Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc. (1986) 42 Cal.3d 1157, 1168, 232 Cal.Rptr. 567, 728 P.2d 1202, quoting Templeton Feed & Grain v. Ralston Purina Co. (1968) 69 Cal.2d 461, 466, 72 Cal.Rptr. 344, 446 P.2d 152. Here, just as in the earlier versions of the cross-complaint, Armstrong has repeatedly alleged an ulterior purpose, but has failed to allege any "wilful act in the use of process not proper in the regular conduct of the proceeding."

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[4] The court went on to hold that defendant's actions were privileged, and "even if we disregard the privilege, it is obvious that just taking the ordinary steps in connection with the taking, transcribing and filing of the deposition cannot be an abuse of process." 53 Cal.Rptr. at 720.

Armstrong's new claims allege, that his attorney attempted, unsuccessfully, to persuade the Church's attorney to "release" non-parties from contractual obligations which prevented them from assisting Armstrong in this or other litigation. Ms. Bartilson's refusal to permit the Church to abjure portions of agreements entered into in 1986 is, Armstrong argues, an "abuse of process."[5]

Since Armstrong himself is presently enjoined by the Los Angeles Superior Court from voluntarily assisting other litigants under the provisions of just such a settlement agreement [Ex. 8 to Request for Judicial Notice], an injunction whose issuance has just been affirmed by the Court of Appeal [Ex. 7 to Request for Judicial Notice], Armstrong's request that the Church abandon the similar benefit which it bargained for and received in the form of settlement agreements with third parties is ludicrous. Nothing obligates the Church to accomodate Armstrong in this manner, just as nothing prevents him from using the discovery processes set forth in the Code of Civil Procedure if he truly believes that these individuals have any testimony to give which is relevant to the Church's claim that he fraudulently transferred his property to his co-defendants.

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[5] The history of this, recounted in the new cross-complaint, is telling. Greene first made this demand, not in conjunction with this action, but in conjunction with the Los Angeles case, in February, 1992. His request was summarily rejected by Ms. Bartilson. Thereafter, Greene did nothing to attempt to gain any discovery from these individuals whatsoever. His request to Ms. Bartilson was renewed on March 30, 1994, just after this Court sustained the demurrer, and is a transparent attempt to transmute a rejection which occurred prior to the running of the statute of limitations into a new "act." However, neither act of rejection constitutes a "use of process," rendering Greene's attempts to create a claim a nullity.

Moreover, the refusal by Ms. Bartilson to capitulate to Greene's demands can hardly be termed a "use" of the processes of the court. "The gist of the tort [of abuse of process] is the misuse **of the power of the court**: It is an act **done under the authority of the court** for the purpose of perpetrating an injustice. . . ." Younger v. Solomon (1974) 38 Cal.App.3d 289, 297, 113 Cal.Rptr. 113, 118 (emphasis supplied). While "process" has been broadly interpreted to include an entire range of procedures necessary to litigation, Barquis v. Merchants Collection Association (1972) 7 Cal.3d 94, 104, 101 Cal.Rptr. 752, 496 P.2d 817, it has not been stretched to include correspondence between attorneys regarding settlement agreements with third parties. These paragraphs may not be used to support an abuse of process claim, because they do not allege any use of process at all.

Similiarly, Armtrong's claims that the Church disseminated "internationally" an unidentified publication which supposedly defamed Armstrong [¶ 70], owes him an debt [¶ 72], and refused to meet with him to discuss settlement of this action [¶ 74], even if assumed to be true,[6] do not plead any "use" of the court's processes, much less a "misuse" of the court's processes.

The remaining new allegations -- that the Church recorded a lis pendens on the real property at issue in this action to protect its interests; filed a declaration mentioning Armstrong in another case, which "induced" Armstrong to further breach his agreement; and made "knowingly false and defamatory statements" about Armstrong in this litigation [¶ 71], which was supposedly filed without sufficient supporting evidence [¶ 73] -- all describe conduct which is absolutely privileged.

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[6] All are, of course, denied by the Church.

Civil Code Section 47 provides in relevant part that "A privileged publication or broadcast is one made: . . . . (b) In any judicial proceeding. . . ." As the California Supreme Court recently re-emphasized,

> For well over a century, communications with "some relation" to judicial proceedings have been absolutely immune from tort liability by the privilege codified as section 47(b). At least since then-Justice Traynor's opinion in Albertson v. Raboff (1956) 46 Cal.2d 375, 295 P.2d 405, California courts have given the privilege an expansive reach. Indeed, as we recently noted, "the only exception to [the] application of section 47(2) [now § 47(b)] to tort suits has been for malicious prosecution actions. [Citations]."

Rubin v. Green (1993) 4 Cal.4d 1187, 1194, 17 Cal.Rptr.2d 828, 831, quoting Silberg v. Anderson (1990) 50 Cal.3d 205, 216, 266 Cal.Rptr. 638, 786 P.2d 365. In Rubin, the court held that even communications and communicative conduct bearing "some relation" to an anticipated lawsuit were privileged. Id. at 832 - 838.

Moreover, in Oren Royal Oaks, supra, the California Supreme Court, upholding a long line of appellate court cases, held that filing or maintaining a lawsuit cannot support a claim for abuse of process, stating:

> The relevant California authorities establish . . . that while a defendant's act of improperly instituting or maintaining an action may, in an appropriate case, give rise to a cause of action for malicious prosecution, the mere filing or maintaining of a lawsuit -- even for an improper purpose -- is not a proper basis for an abuse of process action. The overwhelming majority of out-of-state precedents have reached the same conclusion.

42 Cal.3d at 1169 (citations omitted).

Here, Armstrong claims that the Church lacks evidence to support its claims, and has defamed him in filings before this court. If Armstrong's allegations are true, and he proves them in defense of this action to the point of a resolution in his favor, then he may be able to use these claims to state a cause of action for malicious prosecution. However, no claim has been stated for abuse of process.

Indeed, the privilege for publications in a lawsuit applies not simply to a complaint, but also to all publications in judicial proceeding, so long as the publication "(1) . . . was made in a judicial proceeding; (2) had some connection or logical relation to the action; (3) was made to achieve the objects of the litigation; and (4) involved litigants or other participants authorized by law." Umansky v. Urquhart (1978) 84 Cal.App.3d 368, 371, 148 Cal.Rptr. 2d 547.

Armstrong has identified no particular publication, made in connection with these proceedings, which does not meet these four criteria. Indeed, Armstrong alleges that the publications which have supposedly defamed him have been made to the Court herein. [Cross-complaint, ¶ 70.] He has alleged that a declaration of David Miscavige in the case of United States v. Fishman, Case No. CV 91-6426 HLH(Tx), United States District Court for the Central District of California, supposedly was filed for an ulterior purpose. This Court may take judicial notice of the declaration, Exhibit 9 to Request for Judicial Notice. The declaration was filed in response to allegations made by the defendant in that action, including allegations made about Armstrong. [See Ex. 9 at ¶ 54.] It had a logical connection to the action, was filed to refute facts alleged in a motion brought by the opposing party, and involved the litigants to that action and a proposed deponent (the declarant). The filing of the declaration, then, was an absolutely privileged act, which cannot form the basis for an abuse of process claim.

The recording of the lis pendens was equally privileged. A review of this Court's own files will reveal that Armstrong's allegations in this regard are absolutely false. The Church did file a lis pendens to protect its rights in this action. It violated no law in doing so. When non-party Solina Walton requested that the Church lift the lis pendens so that she could re-finance the property, the Church did so. [Ex. 10 to Request for Judicial Notice, Declaration of Linda Fong, ¶ 7.] Walton did file a motion for expungement before the Church agreed to temporarily discharge the lis pendens, but an agreement was reached prior to hearing on the motion, and no order was ever entered. Thereafter, the Church re-filed its lis pendens, again for the precise purpose stated in the statute authorizing such notices. Just as the filing of this action cannot support a claim for abuse of process, neither can the filing of a lis pendens.

B. Demurrer Must Be Sustained Because There Is Another Action Pending Between The Same Parties On The Same Cause of Action

Code of Civil Procedure Section 430.10(c) provides, in relevant part, that a cross-defendant may object to a cross-complaint by demurrer when, "[t]here is another action pending between the same parties on the same cause of action." Demurrer is proper in such a case because the first suit affords an ample remedy, rendering the second action unnecessary and vexatious.

National Auto. Ins. Co. v. Winter (1943) 58 Cal.App.2d 11, 16, 136 P.2d 22, 25.

Here, through the addition of a few new allegations -- amendments which allege only privileged or non-judicial conduct, see Part II A 2, supra -- Armstrong seeks to allege a "different" cause of action for abuse of process. These changes do nothing to defeat the Church's demurrer.

To prevail on a demurrer pursuant to §430.10(c), the Church must demonstrate that the cause of action for abuse of process alleged in the First Cross-complaint is, for all practical purposes, identical with the cause of action for abuse of process alleged in the Second Cross-complaint. Burnard v. Irigoyen (1943) 56 Cal.App.2d 624, 631, 133 P.2d 3, 7. Moreover, the second claim must involve the same parties that were involved in the first claim. W.R. Grace & Co. v. California Employment Com. (1944) 24 Cal.2d 720, 727, 151 P.2d 215, 219. The parties must stand in the same relative positions as plaintiff and defendant in the two actions. Western Pine & Steel Co. v. Tuolumne Gold Dredging Corp. (1944) 63 Cal.App.2d 21, 29, 146 P.2d 61, 65. Finally, the moving party must show that there is, in fact, another pending action, which was commenced before the filing of the action in which demurrer is urged. Kirman v. Borzage (1949) 89 Cal.App.2d 898, 903, 202 P.2d 303. An action is deemed to be pending from the time of its filing until its final determination on appeal. C.C.P. §1049.

Here, Armstrong has not alleged different facts in support of his abuse of process claim. Armstrong's claims of years of "harassment" by the Church, which foolishly paid him large sums of money in settlement of one false claim, are already the subject of litigation in Los Angeles. Armstrong may not re-litigate the same claims here. Similarly, there is an identity of parties between the two actions. Both of the cross-defendants named in the Second Cross-complaint were named as cross-defendants by Armstrong in the First Cross-complaint.[7] In the second action, as in the first, only the Church has been served with the Cross-complaint. Moreover, the Church and Armstrong stand in precisely the same position in the Third Cross-complaint as they do in the First. Finally, it is plain from court records which this Court may judicially notice that the First Cross-complaint was commenced before the Fourth Cross-complaint, and is still pending. [Exs. 2, 3, 4, 5, 6 and 7 to the Request for Judicial Notice].

With this identity of claims and parties present in a currently pending prior action, this Court must sustain the Church's demurrer pursuant to C.C.P. § 430.10(c).

IV. ARMSTRONG AND HIS LAWYER SHOULD BE SANCTIONED FOR FILING A FRIVOLOUS CROSS-COMPLAINT

Section 128.5 of the Code of Civil Procedure provides in relevant part that, "Every trial court may order a party, the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. . ." The courts apply an objective standard in determining whether a lawsuit is frivolous, finding that a suit has no merit "where any reasonable attorney would agree that the action is totally and completely without merit." Finnie v. Town of Tiburon (1988) 199 Cal.App.3d 1, 12, 244 Cal.Rptr. 581, quoting Winick Corp. v. County Sanitation Dist. No. 2 (1986) 185 Cal.App.3d 1170, 1176-1177, 230 Cal. Rptr. 289. Here, Armstrong's new abuse of process claim is just as defective as his first two, and its lack of merit is plain to any reasonable attorney. He is simply not capable of stating any claim for relief for abuse of process in this action. Yet, the Church has been forced to expend attorney's fees not once, but three times to prepare demurrers to these harrassing cross-complaints. This time, Armstrong should be ordered to pay to the Church its reasonable expenses, including attorney's fees.

---

[7] The fact that Armstrong has named, but not served, other defendants in the first action is irrelevant. The only question to be decided is whether the rights of the parties to the second action will be completely adjudicated by the first. Because here all of the named parties to the second action (Armstrong, the Church and Mr. Miscavige) are also named parties to the first action, standing in the same relationship to one another, their collective rights will be completely determined in the first action, rendering the second action superfluous.

V. CONCLUSION

Armstrong's Fourth Cross-complaint recites stale facts which do not result in a claim for abuse of process. The few allegations which concern matters not barred from consideration by the relevant statute of limitations are barred from consideration by the absolute privilege afforded by Civil Code Section 47(b). Moreover, the Fourth Cross-complaint is a clever duplicate of an action already pending between these parties in Los Angeles. Armstrong's frivolous reassertion of these claims here wastes the time of both the Court and the Church. Armstrong has already amended this cross-complaint twice, to this fruitless effect. The Church's demurrer must be sustained with prejudice, and Armstrong and his lawyer sanctioned.

DATED: May 20, 1994

Respectfully submitted,

WILSON, RYAN & CAMPILONGO

By: /s/
Andrew H. Wilson

Laurie J. Bartilson
BOWLES & MOXON

Attorneys for Plaintiff and Cross-Defendant CHURCH OF SCIENTOLOGY INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On May 20, 1994 I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS DEMURRER TO GERALD ARMSTRONG'S SECOND AMENDED CROSS-COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on May 20, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

[ ]** Such envelopes were hand delivered by Messenger Service

Executed on May 20, 1994, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie Barak

Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

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Attorney for Defendant
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. **157 680**

GERALD ARMSTRONG'S OPPOSITION TO DEMURRER TO SECOND AMENDED CROSS-COMPLAINT

Date: June 10, 1994
Time: 9:00 a.m.
Dept: One
Trial Date: 9/29/94

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I. INTRODUCTION

On March 25, 1994, the Court sustained Scientology's demurrer to Armstrong's first amended cross-complaint. As to the cause of action for abuse of process, the Court ordered:

> As to the second cause of action for abuse of process, cross-complainant fails to allege any "wilful act in the use of process not proper in the regular conduct of the proceeding." (see Oren Royal Oaks Venture v. Greenberg, Berhard, Weiss, Karma, Inc. (1986) 42 Cal.3d 1157, 1168) All of the allegations regarding plaintiff's pursuit of this litigation go to the first element of the cause of action, "ulterior purpose." (Id.) Cross-complainant shall have 20 days' leave to amend to state a cause of action if he can.

(Tentative Ruling, 3/25/94)

Thereafter Armstrong filed his second amended cross-complaint ("SAC") which is the subject of the instant proceeding. Rather than address Scientology's aspersions thrown at the allegations of Armstrong's second amended cross-complaint, and based on the clear implication from the Court's order that Armstrong has sufficiently pleaded the element of "ulterior purpose," [1] he will go directly to the issue of whether or not he has pleaded any "wilful act in the use of process not proper in the regular conduct of the proceeding."

II. ARMSTRONG'S SECOND AMENDED COMPLAINT ALLEGES THE WILFUL ACTS THAT THE COURT'S MARCH 25, 1994 ORDER SAID WERE REQUIRED

Armstrong has sufficiently pleaded the ulterior purpose element of an abuse of process. He says it is Scientology's use of the legal system as an engine of retributive and retaliatory destruction intended to eliminate any impediment to its dissemination of propagandistic falsehoods and to suppress evidence and obstruct justice. (SAC ¶¶ 10-46)

---

[1] It is curious that only now Scientology seeks in its companion motion, for the first time to strike said allegations in this attack on the cross-complaint.

Armstrong's second amended cross-complaint alleges that his former lawyer, Michael Flynn, represented former organization executives Laurel Sullivan ("Sullivan"), William Franks ("Franks"), Howard Schomer ("Schomer"), Edward Walters ("Walters") and Martin Samuels ("Samuels"), all of whom were Scientology contemporaries of Armstrong. (SAC, ¶ 21) While so represented by Flynn, who had his own claims against Scientology (SAC ¶ 22), Sullivan, Franks, Schomer, Walters, and Samuels signed gag agreements identical to that signed by Armstrong under circumstances in which Flynn was effectively acting as the agent of Scientology. Moreover Flynn agreed never to litigate against Scientology again or to assist his client, defendant Armstrong. (SAC ¶¶ 26-35) [2]

Having no money to fiance depositions and travel, Armstrong is unable to effectively defend himself in the instant litigation and that in Los Angeles wherein Scientology is seeking to enforce the settlement contract, because his witnesses have all signed identical contracts. [3] Armstrong has requested Scientology to release such persons from their contracts so that he could have witnesses who would support his defense both in the Los Angeles Action and here. Scientology has refused. (SAC ¶¶ 60-67)

---

[2] Scientology admits the existence of such contracts when it states "Armstrong's request that the Church abandon the similar benefit which it bargained for and received in the form of settlement agreements with third parties is ludicrous." (Memorandum in Support of Demurrer at 8:13-15) Moreover, Scientology argument that the only evidence that is relevant is limited to "the Church's claim that he fraudulently transferred his property to his co-defendants" (Id. at 8:20-21) disregards both the new matter asserted in the affirmative defenses in Armstrong's answer and the fact that Armstrong cannot finance the taking of depositions of third-party witnesses.

Such has the effect of aggregating control of both sides of the litigation to Scientology because it has eliminated the witnesses whose testimony would damages its claims from being available to Armstrong. Even if Armstrong took the depositions of such witnesses, if they were not specifically released, they would still be subject to the type of intimidation alleged by Armstrong in Paragraphs 42-43 of his second amended cross-complaint.

Both the effect of such a scheme and another wilful act in furtherance thereof are alleged with reference to Scientology filing a declaration containing falsehoods which pertained to Armstrong and then suing Armstrong for filing his own declaration in rebuttal. (SAC ¶ 69) Armstrong further alleges the abusive nature of such scheme by stating that in the face of Scientology's lies about him he has two choices: to respond or to remain silent. If he responds, he is sued and if he remains silent, Scientology will state that he adoptively admits its falsehoods. (SAC ¶ 70) [4]

---

[3] It is upon such contract Scientology asserts its "claim" in the instant lawsuit responsibility for which it contends Armstrong has sought to evade by transferring what was once his house to another of his former lawyers, Michael Walton.

[4] Scientology does not directly address what Armstrong alleges with respect to what David Miscavige, the leader of Scientology, said about Armstrong and Armstrong's response thereto which Scientology then used as the basis to sue Armstrong again.

Further, in this action on August 3, 1993, Scientology knowingly and without legal authority filed a lis pendens against the Fawn Drive property as part of its use of the legal system as a tool of destruction in general and to hurt Armstrong in particular by attacking his friends, the Waltons. (SAC ¶ 68)

On October 29, 1993, this Court ordered the expungment of said lis pendens as follows:

> The Court, having considered the evidence and the points and authorities in support of and in opposition to the motion, and having heard argument from counsel, finds that the motion should be granted and the notice of pendency of action (lis pendens) recorded August 5, 1993 in the office of the County Recorder of the County of Marin as instrument number 93-062800, and filed in the above-captioned action, should be expunged on the grounds that the within action does not affect title to or possession of specific real property ... and plaintiff has failed to establish the probable validity of the real property claim contained in the complaint by a preponderance of the evidence ... and the notice of pendency of action (lis pendens) was defectively served and filed.
>
> IT IS THEREFORE ORDERED THAT the notice of pendency of action (lis pendens) recorded on August 5th, 1993 in the office of the County Recorder of Marin County as instrument number 93-062800 is hereby ordered expunged.
>
> IT IS FURTHER ORDERED that plaintiff, Church of Scientology International, shall reimburse SOLINA WALTON in the sum of $3,500 for attorneys fees and costs and $14.00 payable before Dec. 1st 1993.

(Order filed herein on 10/29/93)

Scientology has refused, despite request, to obey the Court's October 29, 1993 order. (SAC ¶ 68) Moreover, on November 29, 1993 Scientology has filed yet another lis pendens against the same property. With respect to the November 29, 1993 lis pendens not one of the individuals named on the proof of service thereof received service of said lis pendens. (Declarations of Michael Walton, Gerald Armstrong and Ford Greene)

III. THE DEMURRER MUST BE OVERRULED AS TO ARMSTRONG'S CAUSE OF ACTION FOR ABUSE OF PROCESS

A. The Cause Of Action For Abuse Of Process Is Not Barred By The One Year Statute Of Limitations

As alleged, the conduct which took place prior to November 30, 1992, is to provide context for Armstrong's abuse of process cause of action. Such pre-November 30, 1992, conduct is not alleged in and of itself as an independent tort. [5] Such pre-November 1993 conduct is alleged, however, as providing the infrastructure for the abuse of process cause of action which is solely aimed at the conduct manifest in the instant lawsuit. The cross-complaint, moreover, alleges that the complaint and other activities herein is part of such scheme and this complaint herein specifically constitute an abuse of process. Since the complaint herein was filed on July 23, 1993, the abuse of process cause of action clearly falls within the one year statute.

---

[5] Were the Court to be convinced by Scientology's contention that the pre-November 1993 conduct was, in fact, alleged as tortious separate from the second cause of action as alleged herein, the Court could impose liability on a continuing tort theory. "The continuing tort doctrine constitutes a pretty well established exception to the usual rule that a statute of limitations starts to run at the time of injury." (The American Law of Torts, § 5:27 at 888-89.) Pursuant to this doctrine, a plaintiff can bring an action against all of a defendant's wrongful conduct, as long as any of it took place during the limitation period. The continuing tort doctrine is applied where "no single incident in a continuous chain of tortious activity can 'fairly or realistically be identified as the cause of significant harm' [making it] proper to regard the cumulative effect of the conduct as actionable." (Page v. United States (D.C.Cir. 1984) 729 F.2d 818, 821-822 quoting Fowkes v. Pennsylvania R.R. (3rd Cir.1959) 264 F.2d 397, 399) The doctrine is intended to prevent a person from acquiring a right to continue to reap benefits from previous tortious conduct. (Page, supra, 729 F.2d at 822)

B. The Abuse Of Process Cause Of Action Is Not Barred By The Law of Privilege

1. Since The Object Of Scientology's Fraudulent Conveyance Action Is The Suppression And Censorship Of Open Communication In Judicial Proceedings, The Complaint Does Not Qualify For Protection By The Litigant's Absolute Privilege

The "broad application" given to Civil Code section 47 (b) provided that it satisfy four conditions: the communication was
(1) made in a judicial or quasi-judicial proceeding;
(2) by litigants or other participants authorized by law;
(3) to achieve the objects of the litigation; and
(4) that have some connection or logical relation to the action.
(Silberg v. Anderson (1990) 50 Cal.3d 205, 211-212, 219)

Before discussing Scientology's failure to satisfy the third element herein, Armstrong will address the manner in which the allegations of the cross-complaint describe behavior that strikes at the very heart of the policy reasons which the California Supreme Court has justified the litigant's privilege to be "absolute."

Certain essential values, defined as "policy" by the California Supreme Court, support the rule that if the four conditions are satisfied, the judicial privilege provides absolute protection. (Id. at p. 215) Whenever the scope of the privilege that the court designates to be "absolute" includes conduct that is harmful, the court's protection can extend to wrongful abuse and exploitation. Therefore, an absolute privilege can "protect the shady practitioner" (Id. at p. 214) such as an attorney who "seeks to deceive a party into relying on an expert by misrepresenting an expert's impartiality." (Id. at p. 213) This judicially stuck balance values the untrammeled ability to protect "the honest one [from having to be] concerned with subsequent derivative actions" (Id. at p. 214) over the "occasional 'unfair' result." (Id. at p. 213)

Similarly, the privilege promotes and encourages

> "'open channels of communication and the presentation of evidence' in judicial proceedings.' [Citation] A further purpose of the privilege 'is to assure utmost freedom of communication between citizens and public authorities whose responsibility is to investigate and remedy wrongdoing.' [Citation] Such open communication is 'a fundamental adjunct to the right of access to judicial ... proceedings.' [Citation] Since the 'external threat of liability is destructive of this fundamental right and inconsistent with the effective administration of justice' [Citation], courts have applied the privilege to eliminate the threat of liability for communications made during all kinds of truth seeking proceedings: judicial, quasi-judicial, legislative and other official proceedings."

(Ibid.)

The "occasional unfair result" is outweighed by keeping "witnesses ... free from the fear of protracted and costly lawsuits which otherwise might cause them either to distort their testimony or refuse to testify altogether" (Id. at p. 214) in order that "the paths that lead to the ascertainment of truth should be left as free and as unobstructed as possible." (Ibid.)

The gravamen of the cross-complaint is that by engineering the subversion of the lawyer who represented the most effective witnesses knowledgeable of Scientology's behavior so that he would get those clients to sign unconscionable settlement contracts subjecting them to harassing lawsuits if they ever testified as witnesses again, Scientology is now able to systematically corrupt "an effective and smoothly operating judicial system" by refusing to release said witnesses to assist Armstrong in his defense in this action. (Id. at p. 215) [6]

By virtue of threats of lawsuits, and its refusal to allow percipient witnesses to assist Armstrong, who has no money to take their depositions, Scientology has eliminated from this case the "open channels of communication" an entire genus of judicially-credited and truthful witnesses knowledgeable about its behavior and practices. Gerald Armstrong stands up against this, refusing to be used as a tool of corruption. (SAC at ¶ 43) [7]

By way of retaliation and retribution, Scientology is attempting to destroy Armstrong and make an example of him. It is doing so by using the settlement contracts it got Armstrong's attorney to make Armstrong and those who, but for the gag-contracts, would be his witnesses sign as a lever to deprive Armstrong of a defense in this action.

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[6] The Los Angeles Superior Court has recognized that the settlement contract on which the instant case is based is corrupt. Judge Geernaert stated: "[T]hat is ... one of the most ambiguous, one-sided agreements I have ever read. And I would not have ordered the enforcement of hardly any of the terms had I been asked to, even on the threat that, okay, the case is not settled. I know we like to settle cases. But we don't like to settle cases and, in effect, prostrate the court system into making an order which is not fair or in the public interest." (SAC at ¶ 45)

[7] Before Armstrong made this determination, he endured Scientology's continual attacks Armstrong after December 1986 when the settlement contract was signed. It published a false and unfavorable description of Armstrong in a "dead agent" pack. It filed several affidavits in the case of Church of Scientology of California v. Russell Miller and Penguin Books Limited, Case No. 6140 in the High Court of Justice in London England which falsely accused Armstrong of violations of court orders, and falsely labeled him "an admitted agent provocateur of the U.S. Federal Government." It delivered copies of an edited version of an illegally obtained 1984 videotape of Armstrong to the international media (SAC at ¶ 41).

After Armstrong was subpoenaed to testify in the case of Bent Corydon v. Scientology, Los Angeles Superior Court No. C 694401, Scientology threatened Armstrong with lawsuits on six occasions if he did not obey its orders to not testify regarding Scientology's dark side. (SAC at ¶¶ 42-43) In the fall of 1989, right after receiving a series of threats from organization attorney Lawrence Heller, Armstrong, who had not earlier responded to Scientology's post-settlement attacks, concluded that he was being used to obstruct justice and that he had a right and a duty to not obstruct justice. (SAC at p. 43)

The prosecution of the instant lawsuit is necessarily predicated on the settlement contract with Armstrong, while Armstrong's ability to defend himself is eviscerated because of identical contracts with those who otherwise would be his witnesses. Each of the many contracts does not allow the former witnesses "to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology ... [and' shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision." (Verified Complaint herein, Exhibit A at ¶ 7-H, pp. 10-11) Scientology refuses to release any such witnesses from such contract for the limited purpose of assisting Armstrong mount his defense in the instant litigation. By virtue of contracts purchased through the corruption of counsel who represented the signing parties, and its refusal to release such parties, Scientology's objective is to suppress, censor and exclude relevant evidence from truth-seeking proceedings to which it is a party. And if one of those who signed such a contract rejects its chains by vigorously participating in "freedom of communication during this truth-seeking proceeding," Scientology will sue him until he no longer exercises "freedom of communication" on behalf of Armstrong or anyone else.

Armstrong's second amended cross-complaint says such conduct constitutes an abuse of process. Scientology has sued Armstrong because Armstrong has refused to go along with a contract that

Scientology compromised his former counsel to get Armstrong to sign. The same counsel got Armstrong's witnesses to sign identical contracts. Now Scientology will not release such persons for the limited purpose of assisting Armstrong defend himself herein. Thus, Scientology in exerting control over both sides of the litigation, which constitutes an abuse of process.

In O'Morrow v. Borad (1946) 167 P.2d 483, the California Supreme Court stated "[i]t is contrary to public policy for a person to control both sides of litigation . . . [which is] in accordance with the fundamental principle that one may not be both the plaintiff and the defendant in an action." (Id. 167 P.2d at 486) Thus,

> The prevailing doctrine in our judicial system that an action not founded upon an actual controversy between the parties to it, and brought for the purpose of securing a determination of a point of law, is collusive and will not be entertained; and the same is true of a suit the sole object of which is to settle rights of third persons who are not parties.

(Golden Gate Bridge and Highway Dist. v. Felt (1931) 214 Cal. 308, 5 P.2d 585, 589-90) Just as "[i]t necessarily follows that the same party cannot be plaintiff and defendant in the same law suit, even though he sue in one capacity and defend in another," (Redevelopment Agency, Etc. v. City of Berkeley (1978) 143 Cal.Rptr. 633, 636-37), it also necessarily follows that a party cannot be the only party in ongoing litigation because he has purchased the absence of adverse witnesses upon whom the defense of his adversary depends.

The most insidious object of Scientology's litigation strategy is to suppress and control the very values which make up "the backbone to an effective and smoothly operating judicial system." (Silberg 50 Cal.3d at p. 215.) This strikes at each of the reasons which underlie the privilege that Scientology is asking this court to use in order to throw out Armstrong's cross-complaint.

2. The Privilege Does Not Apply Because The Cross-Complaint Alleges That The Conduct Constituting An Abuse Of Process Is Part Of A Scheme To Suppress Evidence And Obstruct Justice In Order To Control Both Sides of Litigation

Civil Code section 47 (b)(2) states that a publication in a judicial proceeding is privileged except if the communication is

> "made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation to the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, 'physical evidence' means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure."

In its fourth cause of action in its Verified Complaint For Damages And For Preliminary And Permanent Injunctive Relief For Breach Of Contract filed in Marin County Superior Court, Case No. 152 229 Scientology alleged:

> "36. In addition to the paralegal services which Armstrong has provided to Ford Greene on the Aznarans' litigation, Armstrong also provided the Aznarans with a declaration, dated August 26, 1991, and filed in the Aznaran's case. In that declaration Armstrong describes some of his alleged experiences with and concerning plaintiff, and purports to authenticate copies of certain documents. These actions and disclosures are violations of Paragraphs 7(G), 7(H) and 10 of the Agreement, requiring that Armstrong pay to CSI and RTC $50,000 in liquidated damages."

(Request for Judicial Notice filed March 19, 1994, Exhibit D at p.

9) The Declaration to which the language in Armstrong II refers is attached as Exhibit F to the Declaration of Ford Greene Opposing Motion To Exclude Expert Testimony filed in Aznaran v. Church of Scientology of California, U.S. District Court, Central District of California, Case No. CV-88-1786-JMI (Ex). (Request for Judicial Notice filed March 19, 1994, Exhibit E) Attached to Armstrong's Declaration are two exhibits. Exhibit 1 is a letter from L. Ron Hubbard to the Federal Bureau of Investigation. Exhibit 2 is one of thousands of Scientology's technical bulletins. Hubbard brags that he knows how to "brainwash faster than the Russians (20 secs to total amnesia against three years to slightly confused loyalty)." Such materials are those which fall within the scope of Evidence Code section 250 and Code of Civil Procedure section 2031.

Since the complaint in the instant case is part of a scheme to retaliate against Armstrong for participation in litigation, and the success thereon is predicated on preventing Armstrong from access to witnesses for his defense that Scientology has had execute gag agreements identical to that signed by Armstrong - all of which are intended to destroy evidence by making it unavailable - said complaint falls in the exception to the litigation privilege.

IV. THERE IS NOT ANOTHER PENDING CAUSE OF ACTION THAT IS BASED ON THE UNDERLYING COMPLAINT BEING AN ABUSE OF PROCESS

Since the underlying action in this litigation was filed after the cases that have been filed in Los Angeles, and since the abuse of process cause of action in the second amended cross-complaint are directed at the complaint herein, Scientology's argument that the demurrer must be sustained because there is another action pending between the same parties on the same cause of action confounds reality. Thus, it should be rejected.

V. SANCTIONS SHOULD NOT BE IMPOSED

A judge may impose monetary sanctions incurred by the other party "as a result of bad-faith actions or tactics, which are frivolous or which are solely intended to cause unnecessary delay." (C.C.P. § 128.5.) "Frivolous means (a) "totally and completely without merit" or (b) "for the sole purpose of harassing an opposing party." (C.C.P. § 128.5 (b)(2).)

A motion is "frivolous" and in "bad faith" where "any reasonable lawyer would agree it is totally devoid of merit"; e.g. lacking in any basis in statutory or case law, or without the necessary evidence to support it. (Karawasky v. Zachay (1983) 146 Cal.App.3d 679, 194 CR 292.)

> "Counsel face the danger of being trapped between their obligation to their clients to diligently pursue any possibly meritorious claim, and their obligation to the judicial system to refrain from prosecuting frivolous claims. '[A]n attorney is often confronted with clashing obligations imposed by our system of justice. An attorney has an obligation not only to protect his client's interests but also to respect the legitimate interests of fellow members of the bar, the judiciary and the administration of justice.' [Citation.]"

(In re Marriage of Flaherty (1982) 31 Cal.3d 637, 647, 183 CR 508.) Frivolous includes only issues "prosecuted for an improper motive - to harass the respondent or delay the effect of an adverse judgment - or when it indisputably has no merit." (Id., 31 Cal.3d at 650.) Even after defining frivolous the court cautioned, ". . . any definition must be read so as to avoid a serious chilling effect on the assertion of litigants' rights ..." and therefore "the power to punish attorneys ... should be used most sparingly to deter only the most egregious conduct." (Id. 31 Cal.3d at 650-51.)

In the case at bar, Armstrong submits that any person with a conscience and sense of fair play would be shocked at what Scientology is doing and that its use of this Court in the instant litigation is an abusive use of process.

VI. CONCLUSION

Based upon the foregoing, Armstrong respectfully submits that the demurrer should be overruled and, if it is sustained, requests leave to amend to allege Scientology's false claim to have served the November 29, 1993 lis pendens on the persons set forth in its proof of service attached thereto.

DATED: June 3, 1994

HUB LAW OFFICES

By: ____________

FORD GREENE
Attorney for Cross-Complainant

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: ARMSTRONG'S OPPOSITION TO DEMURRER TO SECOND AMENDED CROSS-COMPLAINT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028
(By Telecopier)

MICHAEL WALTON
P.O. Box 751
San Anselmo, California 94960

[x] (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.

[x] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: June 3, 1994

A. WILSON, 954-0938

F 456-5318

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
CIVIL CALENDAR AND MINUTES

RULINGS

DATE: FRI. JUNE 17, 1994
TIME: 9:00
REPORTER: J. KNETZGER
OPPOSITION DUE: 6/10/94
JUDGE: GARY W. THOMAS
CLERK: J. BENASSINI
REPLY DUE: 6/15/94
DEPT. NO. 1
COMPLETED:

CASE NO.	TITLE OF ACTION	PROCEEDING	ATTORNEY
18) 157680	CHURCH OF SCIENTOLOGY INTL. V GERALD ARMSTRONG, ET AL	463-4395	

THE DEMURRER TO THE SECOND AMENDED CROSS-COMPLAINT ON THE GROUND OF FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION IS OVERRULED. THE COURT AGREES THAT THE MAJORITY OF THE ALLEGATIONS ARE INSUFFICIENT AS WILL BE SHOWN BELOW. HOWEVER, TWO ALLEGATIONS SURVIVE CROSS-DEFENDANT'S CHALLENGE. IN PARAGRAPH 69, CROSS-COMPLAINANT ALLEGES THE FILING OF A FALSE DECLARATION IN A FEDERAL DISTRICT COURT ACTION. CONTRARY TO CROSS-DEFENDANT'S ARGUMENT, IT CANNOT BE DETERMINED FROM THE FACE OF THE COMPLAINT OR JUDICIALLY NOTICED MATTERS THAT THE ABSOLUTE JUDICIAL PRIVILEGE APPLIES. ALTHOUGH CROSS-DEFENDANT PROVIDES A COPY OF THE DECLARATION, THE COURT CANNOT NOTICE THE TRUTH OF STATEMENTS MADE IN THAT DECLARATION. (SEE *SOSINSKY* V. *GRANT* (1992) 6 CAL.APP.4TH 1548, 1564.) EVEN IF THE COURT COULD JUDICIALLY NOTICE THE TRUTH OF THE DECLARATION, CROSS-DEFENDANT HAS FAILED TO SHOW HOW STATEMENTS ABOUT CROSS-COMPLAINANT, A NON-PARTY TO THAT ACTION, WERE MADE TO ACHIEVE THE OBJECTS OF THE LITIGATION OR WERE RELEVANT OR CONNECTED. IN PARAGRAPH 73, CROSS-COMPLAINANT ALLEGES USE OF THE DISCOVERY PROCESS TO OBTAIN INFORMATION FOR IMPROPER PURPOSES. CROSS-DEFENDANT'S PRIVILEGE ARGUMENT FAILS IN THAT THE ALLEGATION DOES NOT INVOLVE COMMUNICATION. THE ALLEGATIONS SUPPORTS A CLAIM OF ABUSE OF PROCESS. (SEE *YOUNGER* V. *SOLOMON* (1974) 38 CAL.APP.3D 289, 296-298.) THE REMAINING ALLEGATIONS ARE DEFICIENT AS FOLLOWS:

¶59 - CONCLUSORY

¶¶60-62 - BACKGROUND ALLEGATIONS. OTHERWISE BARRED BY STATUTE OF LIMITATIONS. (*KAPPEL* V. *BARTLETT* (1988) 200 CAL.APP.3D 1457, 1467.)

¶¶64-67 - NO USE OF "PROCESS." ALLEGATIONS DO NOT SHOW ACTION TAKEN PURSUANT TO JUDICIAL AUTHORITY OR WITH REFERENCE TO THE POWER OF THE COURT. (SEE *ADAMS* V. *SUPERIOR COURT* (1992) 2 CAL.APP.4TH 521, 530.)

¶68 - NO ACTION TAKEN AGAINST CROSS-COMPLAINANT.

¶69 (ALLEGATION RE: PURSUIT OF LIQUIDATED DAMAGES) - MERE MAINTENANCE OF LAWSUIT FOR IMPROPER PURPOSE IS NOT AN ABUSE OF PROCESS. (*OREN ROYAL OAKS VENTURE* V. *GREENBERG, BERNHARD, WEISS & KARMA, INC.* (1986) 42 CAL.3D 1157, 1169.)

(CONTINUED ON PAGE 5-~~6~~-1.)

SUPERIOR COURT, MARIN COUNTY, CALIFORNIA
CIVIL CALENDAR AND MINUTES
RULINGS

DATE: FRI. JUNE 17, 1994 TIME: 9:00 REPORTER: J. KNETZGER
OPPOSITION DUE: 6/10/94 JUDGE: GARY W. THOMAS CLERK: J. BENASSINI
REPLY DUE: 6/15/94 DEPT. NO. 1 COMPLETED:

CASE NO.	TITLE OF ACTION	PROCEEDING	ATTORNEY
18) 157680	CONTINUED: CHURCH OF SCIENTOLOGY V. ARMSTRONG		

¶¶70-72 - NO USE OF "PROCESS."

¶73 (ALLEGATION RE: REFUSAL TO ACKNOWLEDGE PROOF) - NO USE OF "PROCESS."

¶74 - PURSUIT OF LITIGATION FOR IMPROPER PURPOSE NOT AN ABUSE OF PROCESS. (*OREN ROYAL OAKS VENTURE*, *SUPRA*, 42 CAL.3D AT 1169.)

THE DEMURRER ON THE GROUND OF ANOTHER ACTION PENDING IS OVERRULED. THE CLAIMS IN THIS ACTION ARE NOT IDENTICAL TO THOSE IN THE LOS ANGELES ACTIONS IN THAT THE CLAIMS IN THIS ACTION INVOLVE CROSS-DEFENDANT'S CONDUCT IN THIS ACTION, NOT THE LOS ANGELES ACTIONS.

THE MOTION TO STRIKE IS GRANTED AS TO PARAGRAPHS 9 THROUGH 54. THOSE ALLEGATIONS ARE BACKGROUND AND ARE NOT ESSENTIAL TO THE STATEMENT OF CROSS-COMPLAINANT'S ABUSE OF PROCESS CLAIM. (CODE CIV. PROC., § 431.10.)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On July 26, 1994I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE **FEDERAL EXPRESS**
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on July 26, 1994 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on _________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Lara Mcfadyen
Print or Type Name

Lara Mcfadyen
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

DEPT. 86

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

2690

Date: July 29, 1994

Honorable	DIANE WAYNE	, Judge	I.R. MATTHEWS-DOTY	, Deputy Clerk
#2	NONE	, Deputy Sheriff	NONE	E.R.M.

(Parties and Counsel checked if present)

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY ______ DEP

BC052395
CHURCH OF SCIENTOLOGY INTERNATIONAL, ETC., ET AL

Counsel For Plaintiff

vs

no appearances

Counsel For Defendant

GERALD ARMSTRONG, ET AL

157680

NATURE OF PROCEEDINGS:

RULING ON MATTER TAKEN UNDER SUBMISSION JULY 28, 1994

The Court, on 7-28-94, having taken plaintiff's OSC re contempt under submission now rules as follows on the matter submitted:

OSC for Contempt: Deny

This court finds that there was a valid order issued on May 28, 1992 (hereinafter referred to as the "Order") pursuant to the opinion of the Court of Appeals, Second Appellate District, May 16, 1994. Pursuant to stipulation the defendant was properly served with the order and had the ability to comply with the order.

The request for contempt concerns three areas of activity alleged to have been engaged in by the Respondent; (1) the Aznaran, litigation, (2) the Wollersheim litigation; and (3) the Roberts litigation. This court finds that Moving Party had not demonstrated beyond a reasonable doubt that the Responding Party has violated the Order.

1. **The Aznaran Litigation**

Moving party argues that based on deposition testimony of Respondent (Ex. 14), he has violated the Order by assisting in a lawsuit against the Church of Scientology prosecuted by the Aznarans. In that testimony taken on October 8, 1992 Respondent indicates that he had conversations with the Aznarans regarding their case after the date of the Order.

However, no where is it suggested that any of those conversations were for the purposes of "assisting" in their claims. And, it appears that any such conversation could have been associated with his ministerial duties as a paralegal in the office of his employer. It should be noted that the Order specifically permits Respondent to engage in such employment and does **not** "wall" him off from all such litigation.

DEPT. 86

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: July 29, 1994

Honorable	DIANE WAYNE	, Judge	I.R. MATTHEWS-DOTY	, Deputy Clerk
#2b	NONE	, Deputy Sheriff	NONE	, E.R.M.

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY INTERNATIONAL,
ETC., ET AL

Counsel For
Plaintiff

vs

no appearances

Counsel For
Defendant

GERALD ARMSTRONG, ET AL

NATURE OF PROCEEDINGS:

Laurie Bartilson, an attorney for Moving Party, also testified that in July 1992 she received a telephone call from Respondent in relation to a Change of Venue order in the Aznaran litigation. She testified that during that conversation Respondent indicated that he was assisting the Aznarans in the litigation. However, court documents conclusively demonstrate that the venue order was not granted until August 28, 1992 suggesting that her recollection of the conversation was flawed.

2. The Wollersheim Litigation

Moving party argues that the affidavit submitted in the Wollersheim litigation violated the Order. Ex. 19. Clearly it would be impermissible for Respondent to have participated in that litigation if Wollersheim had been the prosecuting party. However, in the litigation in which the affidavit was used, the Church of Scientology was the plaintiff and Wollersheim was the defendant. This did not violated the prohibition of assisting in a claim "against" the church.

3. The Roberts Litigation

As demonstrated by Ex. 11 and 12 Respondent participated in the Roberts litigation to the extent that he executed two proofs of service in that matter. Such conduct was ministerial in nature and does not violate the prohibition against assisting in litigation.

Moving party also suggests that the Order was violated by conversations Respondent had with Roberts regarding his case. Ex. 8 and the deposition of October 8, 1992. However, it appears that those conversations took place prior to the Order.

And finally, when read in its totality, the letter of December 22, 1992 (Ex.9) does not amount to activity which "assists" in litigation on behalf of Roberts.

SUPERIOR COURT OF CALIFORNIA , COUNTY OF LOS ANGELES

Date: July 29, 1994

Honorable DIANE WAYNE , Judge | I.R. MATTHEWS-DOTY , Deputy Clerk

#2c NONE , Deputy Sheriff | NONE , E.R.M.

BC052395

(Parties and Counsel checked if present)

CHURCH OF SCIENTOLOGY INTERNATIONAL, ETC., ET AL

Counsel For Plaintiff

vs

no appearances

Counsel For Defendant

GERALD ARMSTRONG, ET AL

NATURE OF PROCEEDINGS:

The OSC and the Citee, Gerald Armstrong, are discharged.

A copy of this minute order is sent to counsel appearing 7-28-94 via U.S. Mail addressed as follows:

MICHAEL L. HERTZBERG, ESQ.
740 BROADWAY
5TH FLOOR
NEW YORK CITY, N.Y.
10003

ANDREW H. WILSON, ESQ.
235 MONTGOMERY STREET
STE. 450
SAN FRANCISCO, CALIF.
94104

LAURIE J. BARTILSON, ESQ.
6255 SUNSET BLVD.
STE. 2000
HOLLYWOOD, CALIF.
90028

FORD GREENE, ESQ.
711 SIR FRANCIS DRAKE BLVD.
SAN ANSELMO, CALIF.
94960

PAGE 3 OF 3

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 463-4395

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

FILED
LOS ANGELES SUPERIOR COURT
AUG 02 1994
[illegible], CLERK
BY S ANDERSON, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY ______ DEP.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; THE GERALD ARMSTRONG CORPORATION, a California for-profit corporation; DOES 2 through 25, inclusive,

Defendants.

AND RELATED CROSS-COMPLAINT

CASE NO. BC 052395 ✓

NOTICE OF CONTINUANCE OF HEARING ON CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT

DATE: August 16, 1994
TIME: 8:30 a.m.
DEPT: 30

DISCOVERY CUT-OFF: 10/7/94
MOTION CUT-OFF: 10/21/94
TRIAL DATE: 11/7/94

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the hearing on cross-defendant Church of Scientology International's Motion for Summary Adjudication of the Second and Third Causes of Action of the

Amended Cross-Complaint, previously set for hearing on August 2, 1994, has been continued, at the request of cross-complainant's counsel, until August 16, 1994 at 8:30 a.m., in Department 30 of the Los Angeles Superior Court, located at
111 North Hill Street, Los Angeles, California 90012.

Dated: August 1, 1994

BOWLES & MOXON

By: ______________________
Laurie J. Bartilson

Attorneys for Plaintiff CHURCH
OF SCIENTOLOGY INTERNATIONAL

H:\ARMSTRON\NOTICE.CON

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On August 1, 1994, I served the foregoing document described as NOTICE OF CONTINUANCE OF HEARING ON CROSS-DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION FOR SUMMARY ADJUDICATION OF THE SECOND AND THIRD CAUSES OF ACTION OF THE AMENDED CROSS-COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

PAUL MORANTZ **FAX AND MAIL**
P.O. Box 511
Pacific Palisades, CA 90272

FORD GREENE **FAX AND MAIL**
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on August 1, 1994, at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ________________, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Matt Ward
Print or Type Name

Matt Ward
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

Andrew H. Wilson, SBN #063209
WILSON, RYAN & CAMPILONGO
235 Montgomery Street
Suite 450
San Francisco, California 94104
(415) 391-3900

Laurie J. Bartilson, SBN #139220
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
(213) 953-3360

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

FILED
LOS ANGELES SUPERIOR COURT
AUG 2 - 1994
EDWARD M. KRITZMAN, CLERK
P Offord
BY P. OFFORD, DEPUTY

FILED
NOV 16 1994
HOWARD HANSON
MARIN COUNTY CLERK
BY ______ DEP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

157680

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. BC 052395 SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT DATE: August 31, 1994 TIME: 8:30 a.m. DEPT: 30 DISC CUT-OFF: Oct. 7, 1994 MTN CUT-OFF: Oct. 21, 1994 TRIAL DATE: Nov. 7, 1994

Church of Scientology International ("the Church") submits this statement of undisputed material facts in support of the Church's Motion for Summary Adjudication of the fourth, sixth and eleventh causes of action of plaintiff's second amended complaint.

I. The Church is entitled to summary adjudication of the Fourth Cause of Action because there is no dispute that the parties entered into a written agreement, that the Church performed all of its obligations pursuant to the agreement, that Armstrong breached the agreement by providing a declaration which purports to discuss his experiences with Scientology to anti-Church litigants Vicki and Richard Aznaran, and that the Church is entitled to liquidated damages of $50,000.00 for this breach.

UNDISPUTED FACT	EVIDENTIARY SUPPORT
1. Gerald Armstrong entered into a confidential Mutual Release of All Claims and Settlement Agreement ("Agreement") with Church of Scientology International ("the Church") on December 6, 1986.	1. Answer of Gerald Armstrong and the Gerald Armstrong Corporation to Amended Complaint (hereinafter "Answer"), ¶¶ 1 and 2; Armstrong Depo. Vol III, Oct. 7, 1992, 301:2-12; 302:1-18, Exhibit A and Exhibit 6 thereto; Mutual Release of All Claims and Settlement Agreement, page 16, Exhibit B.
2. The Agreement was signed on behalf of the Church by its President, Reverend Heber Jentzsch.	2. Mutual Release of All Claims and Settlement Agreement, page 16,

	Exhibit B.
3. The Agreement was signed by Armstrong's attorney, Michael Flynn, approving it as to form and content.	3. Mutual Release of All Claims and Settlement Agreement, page 16, Exhibit B.
4. Armstrong signed and initialed the Agreement in the presence of his counsel, Michael Flynn, and witnesses Michael Sutter and JoAnn Richardson. The signing was recorded by video camera.	4. Armstrong Depo. Vol I, 172:9-12, Exhibit A; Declaration of Larry Heller, ¶ 3, Exhibit C, and Exhibits A and B thereto.
5. Prior to signing the Agreement, Armstrong discussed its terms with his attorneys, Michael Flynn and Michael Walton. He also discussed it with a third attorney, Julia Dragojevich.	5. Armstrong Depo. Vol. I, June 24, 1992, 37:14-20; 38:11-23; 69:18-70:16, Exhibit A.
6. At the time he signed the Agreement, in the presence of his counsel and live witnesses, Armstrong had the following exchange with CSI attorney, Larry Heller: LARRY HELLER: O.K. Ah, Mr. Armstrong, I'm going to ask you to sign three documents, ah, a Mutual Release of	6. Declaration of Larry Heller, ¶¶ 4 and 5 (Exhibit A thereto and Exhibit B thereto, 1:19-2:18), Exhibit C.

All Claims and Settlement Agreement, and two separate affidavits. Prior to doing so, however, I would like to ask you some questions with regard to those documents, um-hm, excuse me, which I would like you to answer freely and honestly, if you would. Ah, first of all, have you had a chance to, ah, completely and comprehensively review and read these documents?

ARMSTRONG: Yeah.

HELLER: O.K. Have you had a chance to discuss these documents with your attorney, Mr. Flynn?

ARMSTRONG: Yes.

HELLER: Has Mr. Flynn explained these documents as well as the legal and factual ramifications to you, legal and practical ramifications to you to your satisfaction?

ARMSTRONG: Uh, I think so, yes.

HELLER: O.k. Well, do you have any question of that whatsoever?

ARMSTRONG: No, I have no current questions about it.

HELLER: O.k. Very good. You are going to sign these of your own free will?

ARMSTRONG: Yes.

HELLER: O.k. You are not suffering from any duress or coercion which is compelling you to sign these documents?

ARMSTRONG: No.

HELLER: All right. You are not presently under the influence of alcohol or any medication, prescription or otherwise, which would impede your ability to comprehend the legal and factual intent of these documents?

ARMSTRONG: No.	
7. Armstrong received a portion of a total sum paid to his attorney, Michael Flynn, in settlement of all claims of Mr. Flynn's clients.	7. Verified Amended Complaint (hereinafter "Complaint"), ¶ 13; Answer, ¶ 13; Mutual Release of All Claims and Settlement Agreement, ¶ 3, Exhibit B.
8. Armstrong received approximately $800,000.00 from Michael Flynn as his portion of the total settlement sum paid by CSI to Mr. Flynn for Flynn's settling clients.	8. Declaration of Graham Berry, Exhibit D (and Exhibit B thereto); Marin Independent Journal, November 11, 1992, article entitled, "Is Money The Root of Our Problems?", Exhibit E.
9. Paragraph 7(D) of the Agreement provides that: "Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or	9. Mutual Release of All Claims and Settlement Agreement, ¶ 7(D), Exhibit B.

audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A"

pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.	
10. At the time the Agreement was signed, it was impossible to calculate the likely cost to the Church and the other settling entities should Armstrong breach the provisions of paragraph 7(D).	10. Mutual Release of All Claims and Settlement Agreement, ¶ 7(D), Exhibit B; Declaration of Larry Heller, Exhibit C, and Exhibits A and B thereto.
11. On May 16, 1994, the Second District Court of Appeal affirmed the trial court's order granting the Church a preliminary injunction.	11. May 16, 1994 Court of Appeal Opinion, Exhibit F, passim; May 28, 1993 Order granting preliminary injunction, Exhibit G, passim.
12. In its May 16, 1994 Opinion, the Second District Court of Appeal found that "Armstrong did not deny the	12. May 16, 1994 Court of Appeal Opinion, Exhibit F, p. 5.

to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during the settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust

charged conduct but asserted the settlement agreement was not enforceable for various reasons, primarily that it was against public policy and that he signed it under duress."	
13. In its May 16, 1994 opinion, the Second District Court of Appeal summarily rejected Armstrong's proffered affirmative defenses, which included arguments, inter alia, that the Agreement was contrary to public policy; signed under duress; violated various constitutional provisions; restrained trade; lacked mutuality and obstructed justice; and that CSI had actually and/or constructively defrauded Armstrong and had unclean hands.	13. May 16, 1994 Court of Appeal Opinion, Exhibit F, pp. 9-10; Appellant's Opening Brief, Exhibit H, pp. 24-49.
14. Armstrong argued to the Court Appeal that some provisions of the Agreement violated the First Amendment. The Court of Appeal rejected this argument, holding, "Although Armstrong's 'Freedom of Speech' is affected, it is clear that	14. May 16, 1994 Court of Appeal Opinion, Exhibit F, pp. 9 - 10; Appellant's Opening Brief, Exhibit H, pp. 20 - 25.

a party may voluntarily by contract agree to limit his freedom of speech. (See In re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker agreed to prior restraint on distribution of film]; ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 319 [Employee's Agreement not to disclose confidential information; 'it is possible to waive even First Amendment Free Speech rights by contract']; Snepp v. United States (1980) 444 U.S. 507, 509, fn 3 "[book by CSI employee subject to prepublication clearance by terms of his employment contract]."	
15. Vicki and Richard Aznaran are former Church members and, in 1991, were actively litigating against several Churches of Scientology. Vicki J. Aznaran, et al. v. Church of Scientology of California, et al., USDC Central District of California CV 88-1786 JMI(Ex) (hereinafter the "Aznaran case").	15. Complaint, ¶ 18; Answer, ¶ 18; Armstrong Depo, Vol. II, July 22, 1992, 183:1-3, Exhibit A. Complaint in the United States District Court for the Central Distinct of California, Case No. CV 88-1786 JMI(Ex), Vicki J. Aznaran, et al. v. Church

	of Scientology of California, et al., Ex. I.
16. In July, 1991, while attorney for the Aznarans, former Church attorney Joe Yanny "hired Gerry Armstrong as a paralegal to help [Yanny] on the Aznaran case. . ."	16. RTC et al. v. Yanny et al., Case No. BC 033035, August 6, 1991, RT 25:19-21, Exhibit J; Declaration of Joseph A. Yanny, July 31, 1991, 4:21-22, Exhibit K.
17. In August, 1991, Armstrong began helping Ford Greene as a paralegal for the Aznarans. Greene tried to convince the Aznarans to pay him a monthly stipend for Armstrong, so that Armstrong could work on the Aznaran case.	17. Declaration of Vicki Aznaran dated May 19, 1994, p. 5, ¶ 7, Exhibit L; Armstrong's Responses to CSI's Requests for Admission, July 21, 1994, Request No. 4.
18. On August 26, 1991, Armstrong signed a declaration for filing in the Aznaran case containing statements regarding his alleged experiences with and knowledge of the Church and L. Ron Hubbard.	18. Armstrong Depo. Vol III, 322:19-323:7, 324:5-10, 324:21-23, 325:1-10, 325:17-326:3, 327:8-10, and Exhibit 11 thereto, Exhibit A; Armstrong Declaration, August 26, 1991, Exhibit N;

	Complaint, ¶¶ 37 and 59; Answer, ¶¶ 37 and 59.

III. CSI is entitled to summary adjudication of the Sixth Cause of Action because there is no dispute that the parties entered into a written agreement, that CSI performed all of its obligations pursuant to the agreement, Armstrong breached the Agreement by providing interviews to the media, and that CSI is entitled to liquidated damages of $100,000 for these breaches.

CSI incorporates herein Undisputed Facts and Evidentiary Support Nos. 1 to 18, supra.

UNDISPUTED FACT	EVIDENTIARY SUPPORT
19. In 1992, Armstrong had twelve contacts with media representatives, two of which were interviews with reporters from the Cable News Network ("CNN") and The American Lawyer magazine.	19. Armstrong Depo. Vol III, 341:24-342:16, Exhibit A.
20. On March 20, 1992, Armstrong and his counsel, Ford Greene, provided a videotaped interview to reporter Don Knapp of CNN.	20. Complaint, ¶ 44; Answer, ¶ 44; Armstrong Depo. Vol III, 341:24-344:14; 345:10-16, Exhibit A.
21. In the CNN interview, Armstrong discussed his knowledge of the Church	21. Complaint, ¶ 44; Answer, ¶ 44; Transcript

of Scientology and L. Ron Hubbard which he had gained through his experiences with the Church of Scientology.	of CNN Broadcast, Exhibit O; Armstrong Depo., Vol III, 343:19-344:4, Exhibit A.
22. Armstrong and his counsel, Ford Greene, were interviewed by reporter William Horne of The American Lawyer magazine. Armstrong made statements concerning his knowledge of and experiences with the Church of Scientology during that interview.	22. Armstrong Depo. Vol. III, 341:24-342:14, 348:21-360:19, Exhibit A.

III. CSI is entitled to summary adjudication on the Eleventh Cause of Action because there is no dispute that the parties entered into a written agreement, that CSI performed all of its obligations pursuant to the agreement, Armstrong breached the Agreement by providing a declaration which purports to discuss his experiences with the Church of Scientology to anti-Church litigant David Mayo and his counsel, and that CSI is entitled to liquidated damages of $50,000 for this breach.

CSI incorporates herein Undisputed Facts and Evidentiary Support Nos. 1 to 18, supra.

UNDISPUTED FACT	EVIDENTIARY SUPPORT
23. On May 27, 1992, Armstrong met with attorneys Jerold Fagelbaum and	23. Complaint, ¶ 68; Answer, ¶ 68; Armstrong

Gary Bright, attorneys for David Mayo and the Church of the New Civilization in the consolidated cases of *Religious Technology Center et al. v. Robin Scott et al.*, United States District Court for the Central District of California, Case No. CV 85-711 JMI(Bx), and *Religious Technology Center et al. v. Larry Wollersheim et al.*, United States District Court for the Central District of California, Case No. CV 85-7197 JMI(Bx). At the time, Fagelbaum and Bright were litigating a cross-claim in that case against, *inter alia*, CSI.	Depo. Vol II, 214:20-216:24, Exhibit A.
24. At his meeting with Fagelbaum and Bright, Armstrong executed a declaration purporting to authenticate an affidavit describing	24. Complaint, ¶¶ 68 and 69; Answer, ¶¶ 68 and 69; Armstrong Depo., Vol II, 219:17-226:25, and

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Armstrong's alleged experiences with the Church.	Exhibit 8 thereto, Exhibit A; Declaration of Gerald Armstrong, May 27, 1992, Exhibit P.

Dated: August 2, 1994

Respectfully submitted,

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

BOWLES & MOXON

By: ______________________
Laurie J. Bartilson

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

2712

IN AND FOR THE SUPERIOR COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

CERTIFIED COPY

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,
Plaintiff,

vs.

Case No. BC 052395

GERALD ARMSTRONG; DOES 1 through 25, inclusive,
Defendants.

DEPOSITION OF

GERALD ARMSTRONG

Wednesday, June 24, 1992

REPORTED BY: SUSAN M. SKIGEN, CSR #5829

Q. And do you remember the first time that you learned that there might be a possibility of settling that litigation, and by that litigation, I mean the litigation that was eventually settled with the settlement agreement?

A. Perhaps 1983.

Q. And the settlement agreement was signed in late '86?

A. Right.

Q. So for some period of some approximately three years you believe there might be a possibility of settlement?

A. Right.

Q. Did you engage in any settlement discussions between the time you first learned of it in 1983 and the time you signed the settlement agreement in 1986?

A. What do you mean by settlement discussions?

Q. Any discussions with anybody concerning settlement of the litigation?

MR. GREENE: To the extent that your response, Mr. Armstrong, to this will require you to disclose any communications that you had with --

MR. WILSON: It's a yes or no question.

MR. GREENE: -- attorneys, I'm just going to catch it ahead of the game, my instruction to you is not to answer on the basis of the attorney-client privilege and possibly the attorney work product privilege.

MR. WILSON: Well, my question was a yes or no question.

MR. GREENE: That's fine, but just keep that in mind, please.

THE WITNESS: What's your question?

MR. WILSON: Why don't you read it back.

MR. GREENE: The question is did you have settlement discussions with anybody?

THE WITNESS: Yes.

MR. WILSON: Q. And without disclosing the substance of those, well, let me ask you just this, I take it some of those discussions were with your attorney?

A. Right.

Q. And that attorney was Michael Flynn; right?

A. Right.

Q. Did you have any discussions with any other attorney representing you besides Michael Flynn?

A. Julia Dragojevich.

Q. Any other attorney, can you give me the names of any other attorneys you discussed it with those settlement agreements; is that correct?

A. I don't have a recollection right now of seeing any.

Q. Do you have a recollection right now of seeing any of them at any time except for the Franks one?

MR. GREENE: Same instruction for the same reasons.

THE WITNESS: Yes, I don't believe so.

MR. WILSON: Q. Prior to your leaving Boston for Los Angeles, had you discussed the terms of your settlement with Mr. Flynn?

MR. GREENE: Attorney-client privilege. Don't answer that.

MR. WILSON: Q. It wasn't -- all right. Never mind.

MR. GREENE: Terms, substance.

MR. WILSON: Q. Except for discussions which you may or may not have had with Mr. Flynn, did you, prior to the settlement agreement being signed, discuss those terms with anyone else?

A. Another lawyer who represented me.

Q. And that was Julia, whatever her last name was that you gave us?

A. No.

Q. Who was that?

A. Michael Walton.

Q. Are there any other lawyers that you discussed the settlement agreement with?

A. No.

Q. Michael Walton, Julia Dragojevich and Mr. Flynn; is that accurate?

A. What is accurate?

Q. That you had discussions about settlement with?

A. I don't believe that I had a settlement or a discussion about the terms of the settlement agreement with Julia Dragojevich. No, I did at a time, I did.

Q. And this was before the settlement agreement was signed?

A. With Julia, I believe it was after.

Q. Now, were you aware of the general terms of the settlement prior to the time you flew to Los Angeles?

A. No.

Q. And I take it, then, that you just became aware of those terms when you, in fact, got to Los Angeles?

A. I had not seen one word until I got to L.A.

Q. I understand that, but were you aware of

MR. WILSON: Q. I assume you said hello?

A. Yeah. And I believe that that was, really was just that, that it was a matter of greeting. There was no negotiations or discussion at that point that I recall at all.

Q. Okay.

A. I mean, I believe the documents were all done.

Q. And you do recall the videotape being turned on and your signing the documents and their being read to you and explained and so on?

A. Right.

Q. And you referred to signing the false affidavit. Can you tell me what affidavit you signed that was false?

A. There was an affidavit which was later used by the organization in a case called, I think it's Church of Spiritual Technology VUS or something. And it had to do with the signers acknowledging that the organization had discontinued it's practices of culling PC folders, and that it was, had reverted back to the, on policy, legal ways as stated by the founder L. Ron Hubbard. And among other things --

Q. Go ahead.

A. And I signed a document, and I have seen

CERTIFICATE OF REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of California, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said action.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my signature this ______ day of JUL 0 9 1992, 19____

CERTIFIED SHORTHAND REPORTER
STATE OF CALIFORNIA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

--oOo--

CERTIFIED
COPY

CHURCH OF SCIENTOLOGY INTERNATIONAL,
a California not-for-profit religious
corporation,

Plaintiff,

vs.

No. BC 052395

GERALD ARMSTRONG; DOES 1 through 25,
inclusve,

Defendants.

DEPOSITION OF

GERALD ARMSTRONG

Wednesday, July 22, 1992

Volume II, Pages 179 - 293

REPORTED BY: KATHERINE NG, CSR NO. 6350

Q. Just so I understand, because I'm not as familiar as you are, can you tell me what the Azneran case is?

A. It's the case of Richard and Vicky Azneran versus a number of Scientology entities filed in U.S. District Court in L.A.

Q. What is your understanding of what Richard and Vicky Azneran are alleging in that case?

MR. GREENE: At this point, since Gerry has worked as a paralegal on this case in my office, I would request, Andy, that if you would phrase the question in terms of at the time that he signed this declaration, which was prior to the point when he worked for me; otherwise, it could constitute some kind of waiver. That way you could probably get what you want.

(Telephonic interruption.)

THE WITNESS: Okay. So my understanding certainly at that point was that the Aznerans who had been involved quite high level in the organization had sued the organization for the wasted years and the abuse of the organization. So it was those sorts of claims.

MR. WILSON: Q. Did you get that understanding from talking to the Aznerans?

A. I believe I got that understanding by that time from a number of sources.

back and forth at that time.

Q. Okay. What do you intend to do to prepare yourself for your trial testimony, if anything?

A. I will stay in touch with the lawyers. I will review my deposition transcripts. That's principally it.

Q. By staying in touch with the lawyers, do you mean to discuss what you're going to testify to?

A. I think if they have any interest, but I think I have already gone through two days of depositions, so I doubt that they're going to ask me that. But stay in touch, when do they want me, and how they want to schedule it, because it's a big case.

Q. Have you discussed with any of the lawyers any of the other testimony that is going to be given, as far as you understand it?

A. Other testimony of other people?

Q. Right.

A. I don't, I don't think I have specifically discussed that.

Q. Do you know a man named Jerry Fagelbaum?

A. Yes.

Q. Who is he?

A. He's a lawyer in Los Angeles.

Q. How did you meet Mr. Fagelbaum?

A. I met him in his office in Los Angeles on May

27, I think.

Q. Of this year or?

A. Right, this year.

Q. And what was the purpose of the meeting that you had with Mr. Fagelbaum?

A. He wanted me to authenticate an earlier declaration which I had written.

Q. Did you know he wanted you to authenticate this declaration?

A. I was in the courtroom that day, and I was handed a note from I believe Ms. Cervantes, but I'm not quite sure. But in any case, I got a little message pad note indicating that he had called for me, so I returned the call.

Q. And what courtroom were you in that day?

A. I think it was Department 88.

Q. That was Judge Sohigian's courtroom?

A. Right.

Q. And his clerk gave you a note, a message from Mr. Fagelbaum?

A. Well, I hesitate to get his clerk in trouble, but, yes.

Q. As far as you know?

A. Right.

Q. As far as you know, Mr. Fagelbaum had left a message for you?

A. Right.

Q. Did you know who he was?

A. I had spoken to him previously, so I knew something about him.

Q. When did you speak to him previously?

A. Maybe a year before. I'm not quite sure.

Q. And what was the subject of that previous conversation?

A. I don't recall.

Q. Did it have anything to do with the Church of Scientology?

A. It may have.

Q. Did you know that Mr. Fagelbaum was a lawyer that was litigating a case against something called the Religious Technology Center?

A. Right.

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Q. Tell me what your understanding of that is?

A. It's an arm of the organization.

Q. That wasn't something that you learned from Mr. Fagelbaum; is that right?

A. No.

Q. You knew that at the time?

A. Right.

Q. Do you know who Mr. Fagelbaum represents?

perhaps as an affidavit and perhaps with different headings with captions, four different cases, but at least the first one, the first original went to Michael Flynn.

Q. And this was for your litigation against the Church of Scientology is that right?

A. Well, I guess, yes.

Q. Okay.

MR. GREENE: Mr. Armstrong, don't guess.

THE WITNESS: Okay.

MR. GREENE: If you don't know, say that you don't know. Give your best estimate, but guessing is not a good idea.

THE WITNESS: It was to assist, it was to help in my battle with Scientology.

(Plaintiff's Exhibit 8 was marked.)

MR. WILSON: Q. Exhibit 8 is a pleading that is entitled too long for me to read, filed in a case in Central District Court of U.S. District Court, California.

Is that the declaration that you signed in Mr. Fagelbaum's office in the 27th of May?

A. It appears to be, yes.

Q. Is paragraph 4 where it refers to Exhibit C, which unfortunately we don't have here, is that the declaration that you have been testifying to?

A. Ask the question again.

MR. GREENE: Mr. Armstrong, with respect to any questions that are propounded to you about the authenticity of documents which are not before you, I instruct you not to answer.

MR. WILSON: On what basis?

MR. GREENE: No foundation.

MR. WILSON: All right.

Q. Let's do it this way then. You just testified that you authenticated a declaration for Mr. Fagelbaum; is that right?

A. Right.

Q. And paragraph 4 says "Attached hereto as Exhibit 'C' is a true and correct copy of a Supplemental Affidavit signed by myself in that litigation known as Tonja Burden v. Church of Scientology California, and it goes on.

A. Okay.

Q. We don't have that attached here. But as far as you know, when you signed the original of this declaration, was there an Exhibit C attached to it?

A. I saw Exhibit C at that time, yes.

Q. And did you recognize Exhibit C?

A. Yes.

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Q. What was it?

A. It was this, that document related to MCCS tape transcript.

Q. It was a declaration that you had previously given?

A. Well, it says here an affidavit, and I believe that it was an affidavit.

Just to go back so that we both, my recollection is this particular document was prepared and filed in a number of cases identical, except for its caption.

Q. And by that particular document, you're referring to the affidavit that is described in paragraph 4; is that right?

A. Right.

Q. Can you tell me in general what that affidavit says?

A. My recollection is that it contains a partial transcript of MCCS tapes.

Q. What are MCCS tapes?

A. They were tape recordings made concerning a, or mission called Mission Corporate Category Sort-Out. And they, in 1982, became part of what were known as the Armstrong documents, and then they became the subject of what is known as the Zolin litigation which involved the

U.S. Government. And they ultimately were found, I believe by the Ninth Circuit, to contain evidence of fraud which made them an exception to the attorney-client privilege, and they were released to the IRS.

Q. Now, you say that this declaration was filed in a number of different cases?

A. Right.

Q. One of them being the Burden case; right?

A. Right.

Q. Can you tell me the other cases, as far as you know, that this declaration was filed in?

A. I believe Van Schaick, McLean. I was told Toronto. Those were ones that I have some certainty about.

Q. Now, when was your affidavit filed in the Burden case, do you know?

A. I was not there specifically, but I believe 1982.

Q. Okay. And the Van Schaick case?

A. I believe also 1982.

Q. And the McLean case?

A. I believe also 1982.

Q. And Toronto?

A. I believe also 1982.

Q. And as far as you know, was it filed in any other case between 1982 and 1992 when you signed this declaration which has been marked as Exhibit 8?

A. I'm not certain. I believe, not with certainty, but I believe it was filed in Corydon.

Q. When, as far as you know?

A. Mid to late '80s.

A. I think also, I'm not sure again, the form or the caption that it had, but in government cases I think involving the IRS.

Q. When this declaration was first prepared, did you draft it or did somebody else draft it?

A. I believe that I transcribed part of the tape, and the partial transcription was sent to Michael Flynn from which a draft of the affidavit was sent back to me. And my recollection is that I edited the draft and prepared the final copy. But it may be that my edited draft then went back to Flynn and then was redone. I say that because I would not have put the caption on it which would have identified it as going to the Burden case, but rather I prepared the substance of it, and then that was put into the declaration or affidavit which had the caption on it.

Q. And this all occurred in approximately 1982?

A. I believe so. But I have authenticated the same affidavit a number of times in other litigation afterwards from the same document, either by authentication by another document or its new preparation and then new signature.

In fact, it just reminded me, I have a recollection of it also being used in the Wollersheim case or being authenticated for the Wollersheim lawyers.

Q. So there would be two ways that you would have either authenticated it in a form similar to Exhibit 8 or re-executed it with a different caption; is that accurate?

A. That's my recollection, yes.

Q. You would have done one of those two things in the cases that you testified to earlier; is that correct?

A. That's my recollection. As I say, it was done a number of times through the period that I was involved in the litigation.

Q. Now, prior to the time that you did it in June of '92, when was the next most recent time? Do you remember either authenticating it with an authenticating declaration or re-executing it?

A. Sometime during the time that I worked in the Flynn office.

Q. And that would have been when?

A. '85, '86.

Q. There was a period of time of somewhere between

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five and six years when you did not either re-authenticate or re-execute it; is that accurate?

A. Right.

Q. Have you ever known Gary Bright?

A. Yes.

Q. Who is Gary Bright?

A. He is another lawyer who represents David Mayo.

Q. In the RTC versus Scott case?

A. I believe so.

Q. And when did you meet Mr. Bright?

A. I think that the first time I met him was May 27.

Q. Of '92?

A. Right.

Q. Would that be in connection with executing this affidavit that we just discussed?

A. Yes.

Q. Have you met him any other times?

A. I have no recollection of meeting him.

Q. When you met with him, was Mr. Fagelbaum there?

A. Yes.

Q. How long did the meeting take?

A. A few minutes.

Q. Can you tell me what was discussed? Did they tell you anything about the case?

A. I asked them because I had heard about it, and I had not seen a copy of it, if I could have a copy or if they had a copy of the Kolts ruling in that case, and they did at that time give me the Kolts ruling.

They had another document, and I don't recall what it is right now, but I believe Exhibit B, which they asked me to authenticate. But I, my recollection is that I said I was not able to authenticate it.

Q. Do you remember what it was that you were asked to authenticate?

A. No.

Q. Okay.

A. And then I looked over the, this document and, and the two documents which I was asked to authenticate and I signed this document. And then we exchanged good-bys and I left.

Q. And no other subjects were discussed at the meeting?

A. I, no, I don't think so.

Q. Have you spoken to Mr. Fagelbaum since that meeting?

A. No.

Q. Have you spoken to Mr. Bright since that meeting?

A. No.

CERTIFICATE OF REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of California, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said action.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my signature this______ JUL 28 1992 day of________,19____

Katherine Ng

CERTIFIED SHORTHAND REPORTER

STATE OF CALIFORNIA

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PLAINTIFF'S EXHIBIT 8
Armstrong
7-22-95

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RELIGIOUS TECHNOLOGY CENTER, a California corporation, et al.,

Plaintiffs,

vs.

ROBIN SCOTT, an individual, et al.

Defendants.

RELIGIOUS TECHNOLOGY CENTER, a California corporation, et al.,

Plaintiffs,

vs.

LARRY WOLLERSHEIM, an individual, et al.,

Defendants.

AND RELATED COUNTER-CLAIMS

CV 85-711 JMI (Bx)
CV 85-7197 JMI (Bx)

SUPPORTING DECLARATION OF GERRY ARMSTRONG TO DEFENDANTS' AND COUNTER-CLAIMANTS' OPPOSITION TO PLAINTIFFS' AND COUNTER-DEFENDANTS' MOTION FOR PROTECTIVE ORDER RE FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS OR THINGS AND FOR SANCTIONS

DATE: June 10, 1992
TIME: 5:00 P.M.
CTRM: Hon. James G. Kolts
Special Master,
Pasadena, Hilton

DECLARATION OF GERRY ARMSTRONG

I, Gerry Armstrong, declare:

1. I am a party to that litigation known as Church of Scientology of California v. Gerald Armstrong, L.A.S.C. Case No. 420153 (hereinafter the "Armstrong" litigation).

2. I am familiar with the pleadings and records in the Armstrong litigation and submit this Declaration based upon my own personal knowledge of the matters contained herein, and if called as a witness, could and would competently testify thereto.

3. Exhibit "A" hereto are true and correct copies of Reporter's Transcripts of Proceedings held in the Armstrong litigation before the Honorable Paul G. Breckenridge, Jr.

4. Attached hereto as Exhibit "C" is a true and correct copy of a Supplemental Affidavit filed by myself in that litigation known as Tonja Burden v. Church of Scientology California, United States District Court, Middle District of Florida, Case No. 80-501-CIV-T-K.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration is made and executed this 27th day of May, 1992 at Los Angeles, California.

GERRY ARMSTRONG

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

--oOo--

CERTIFIED COPY

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff,	
vs.	No. BC 052395
GERALD ARMSTRONG; DOES 1-25, inclusive, Defendants.	

DEPOSITION OF
GERALD ARMSTRONG

Volume III

October 7, 1992

REPORTED BY: LARRY BOSTOW, CSR# 5941

A. Fair.

Q. All right. Mr. Armstrong, I'm going to hand you a document that has already been marked. It's a copy of a document previously marked as Exhibit 6 to your deposition. Take a look at it, please.

A. Yes.

Q. Now, Mr. Armstrong, that's the document that is the agreement which is the subject of the dispute in this litigation; is that correct?

A. Yes.

Q. And this is an agreement which you signed on December 6th, 1986; is that correct?

MR. GREENE: That's asked and answered.

Don't answer the question.

Go ahead.

MS. BARTILSON: It hasn't been answered as to this document.

MR. GREENE: Yeah, it has. Wilson went through all this. That's the agreement. That's Armstrong's signature.

Let's proceed.

Ask him something new.

Don't answer the question.

MS. BARTILSON: Actually, he hasn't, so I'm going to make the record.

Q. Mr. Armstrong, if you look at page 3, please, of the agreement: The signature that appears partway down the page is your signature; is that correct?

A. Yes.

Q. And if you look at page 16 of the agreement, the first signature on that page, appearing about halfway down, is your signature; is that correct?

A. Yes.

Q. Looking through the agreement: Those are your initials that appear on each page of the agreement; is that correct?

A. Yes.

Q. On the bottom right-hand corner?

A. Yes.

Q. And you made those initials yourself?

A. Yes.

Q. On December 6th, 1986?

A. Yes.

Q. If you would look, please, at paragraph 3 on page 2 of the agreement.

A. Yes.

Q. You see in that paragraph, it says, "Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn."

Q. And all of the documents were returned, then, at some later time even if they weren't returned right then?

A. Right.

And just so we also understand about the use of the word "returned," because they were not returned to CSI because they never came from CSI.

Nevertheless, as long as we understand that, as far as acceptability by your organization, CSI was the designated recipient, and it was our understanding that when we were delivering documents to whomever, that that was honoring this clause of this affidavit.

Q. I understand.

Let's get the originals back to the court reporter.

Then let's mark 11.

(Whereupon Plaintiff's Exhibit 11 was marked.)

MS. BARTILSON: Q. So the court reporter has handed you an 11-page document with an Aznaran case caption, titled "Declaration of Gerald Armstrong in Opposition of Motion to Exclude Expert Testimony," and marked as Exhibit 11, and I would like you to take a look at it, please.

A. Did you ever read "Fear"?

Q. No.

Mr. Armstrong, have you had an opportunity to review the two-page declaration that is the beginning of Exhibit 11?

A. Yes.

Q. Is that a declaration that you drafted, sir?

A. Yes.

Q. Did you also --

A. Hold on a minute.

MR. GREENE: Hold it.

Any responses having to do with any communications that occurred in my office, between you and me or otherwise, I'm instructing you not to answer. You can authenticate this document, but as to its preparation, do not answer the question.

MS. BARTILSON: I can't ask him if he drafted this declaration?

MR. GREENE: You can ask him. I'm going to instruct him not to answer.

MS. BARTILSON: Let me make my record real quick here, then.

MR. GREENE: I'll just do it for you.

I will allow the witness to authenticate this document, which he's already done.

MS. BARTILSON: Actually, he hasn't.

MR. GREENE: If he hasn't, fine, have him authenticate it. Any questions about the document's preparation, I'm going to instruct him not to answer.

MS. BARTILSON: Okay.

Q. Mr. Armstrong, is that your signature on page 2 of the document?

A. Yes.

Q. And did you sign it on the 26th of August 1991, in San Anselmo, under penalty of perjury?

A. Yes.

Q. Looking at Exhibit 1 attached to the declaration, do you recall how it came into your possession?

MR. GREENE: Again, Mr. Armstrong, if, in your response to the question, you would disclose any communications or transactions which transpired between you and me or within the activities in my office, I would instruct you not to answer the question. If, on the other hand, your response would not include a disclosure of such information, you may.

THE WITNESS: Then I would not answer.

MS. BARTILSON: Q. Same question as to Exhibit 2.

MR. GREENE: And same admonition and instructions.

THE WITNESS: This one, I believe, I can answer differently.

MS. BARTILSON: Q. And what's your answer?

A. This document was in a Scientology book, and it -- I had a copy made, and it was originally filed in the Armstrong I case as an exhibit to a document. Then it was filed in the Court of Appeal as an exhibit, and it is my belief that the number "382" indicates that it comes from the document which was filed in the Court of Appeal.

MR. GREENE: Just so the record is clear: We're making a reference to a document entitled "Technical Bulletin of 22 July 1956" from the Hubbard Communications Office.

MS. BARTILSON: Yes. Which was marked as Exhibit 2. That's how we identified it.

Q. Mr. Armstrong, you say this was attached as an exhibit to something that was filed with the Court of Appeal.

Do you recall who filed it with the Court of Appeal?

A. I did.

Q. And when you filed it with the Court of Appeal, it was something that you yourself had copied from a book, is that correct? Or that you had copied from an exhibit that was part of the Armstrong I trial record?

A. That's correct, the latter.

Q. Okay. I just want to make sure I have the transition correct.

A. It had been an exhibit in one of the depositions taken in the Corydon case, and it was provided to me at that time.

Q. And this was your deposition in the Corydon case?

A. Correct.

Q. And who gave it to you at that time?

A. I do not recall if it came into my possession at exactly that time or if it later came into my possession as an exhibit to the deposition transcript. But in any case, it ended up with that set of materials.

Q. So you obtained a copy of the deposition transcript from the Corydon case?

A. Correct.

Q. And this was an exhibit?

A. Correct.

Q. I see.

Prior to that, had you had possession of this document?

A. No. Although -- Let me correct that.

In that it is a public document and is published by your organization, it was available in its raw, original form, but the photocopy of that document, I only obtained at that time.

Q. But did you have the other form of the document within the book, or whatever, prior to that?

A. No. I didn't have a book.

Q. Mr. Armstrong, do you know if Exhibit 11 was filed in the Aznaran case?

A. It is my belief that it was.

Q. Did you participate in any activity to ensure that it would be filed in that case?

MR. GREENE: Again, any conduct of yours, Mr. Armstrong, which occurred during the course, scope, of your employment by me, I am instructing you not to disclose. If you can answer the question without disclosing any of the procedures which took place in my office, then that's fine.

THE WITNESS: Then I think you should reask the question.

MS. BARTILSON: Q. Did you take any steps to ensure that this declaration would be filed in the Aznaran case?

MR. GREENE: Same admonition.

MS. BARTILSON: Q. It's a "Yes"-or-"No"

A. Do I think?

Q. Yes.

A. They may.

Q. Is there anyone else who may have knowledge of to whom it was sent?

A. Cable News Network and the Chronicle.

Q. Obviously, the recipient, but anyone else engaged in the sending or who would know about the sending besides the recipients?

A. I don't believe so.

Q. What about the San Francisco Examiner? Do you know if it was sent to the San Francisco Examiner?

A. I don't know.

Q. Do you know if it was sent to the Marin County Independent Journal?

A. What was your question?

Q. Do you know if it was sent to the Marin County Independent Journal?

A. I don't know.

Q. At the time that this press release was sent out, Mr. Greene was your attorney in this case; is that correct?

A. Yes.

Q. Earlier this year, Mr. Armstrong, you gave interviews to media representatives, did you not?

A. Yes.

Q. Do you recall approximately how many such interviews you've given in 1992?

A. I believe there has only been one interview which I would consider an interview, and that was with CNN.

Q. And were there other times when you spoke to reporters, or other media representatives, that you did not consider an interview?

A. Yes.

Q. Approximately how many of those?

A. I must retract that.

I consider that Bill Horne of the American Lawyer interviewed me.

And then additional contacts of any kind with the media, perhaps ten.

Q. All right. Let's look first at the interview with CNN.

Do you recall the date of that interview

A. My recollection is March 20th, 1992.

Q. Do you recall if it was before or after the hearing held before Judge Dufficy in Marin County Superior Court on the motion for preliminary injunction

A. Yes.

Q. Which was it, before or after?

A. After.

Q. The same day or the next day?

A. Same day.

Q. And where did this interview take place?

A. In Mr. Greene's office.

Q. Do you recall the name of the reporter?

A. Yes.

Q. And who was that?

A. Don Knapp, N-a-p-p (sic).

MR. GREENE: K-n --

THE WITNESS: K-n-a-p-p.

Thank you.

MS. BARTILSON: Q. And for approximately how long were you interviewed by Mr. Knapp?

A. Perhaps five minutes. Less.

Q. And was your lawyer also interviewed by Mr. Knapp?

A. Yes.

Q. Do you recall any of the substance of what you communicated to Mr. Knapp during the interview?

A. Yes.

Q. What was that?

A. It related to Scientology's practice of fair game and my knowledge of organizational and Hubbardian fraud.

Q. Knowledge which you had gained because of your years of experience with the organization, as you term it?

A. Correct.

Q. Was the interview videotaped?

A. Yes.

Q. Was the entirety of the interview videotaped, or were there times that you also spoke with Mr. Knapp that were not videotaped?

A. If, by that, you mean when, for example, I may have helped him out with his camera gear, opened the door for him and said "Good-by," or helped him move things around and exchanged comments of that nature, then, no. I think that's how to answer it.

MS. BARTILSON: Could you read back the question and the answer, because I'm not sure --

MR. GREENE: He said that there was no substance aside from courtesies that -- there was nothing -- nothing was videotaped except --

Go ahead. Read it back.

MS. BARTILSON: I'm not sure that was the answer to the question. I just want to see what we've got.

Okay.

(Whereupon the record was read.)

MS. BARTILSON: Okay. Thanks.

Q. The only substantive conversations you had with Mr. Knapp, concerning the matters that you've testified to as to what the interviews were, were on videotape; is that correct?

That was an unclear question.

A. The only substantive conversations which concerned that subject that I just spoke about were on videotape, yes.

Q. Were you present when your attorney was interviewed by Mr. Knapp?

A. Yes.

Q. Do you recall what it is that your attorney spoke about?

A. I recall him speaking about constitutional issues.

Q. Do you recall what constitutional issues?

A. Freedom of speech.

Q. Did Mr. Greene speak about freedom of speech in the abstract, or did he relate it to any particular factual circumstance?

A. I believe he related it to the concept of the organization's attempt, through the settlement agreement, to stifle freedom of speech and stifle the public's right to the knowledge of the organization's tortious practices.

Q. By the way, Mr. Armstrong, you were present in the courtroom on March 20th, 1992, in front of Judge Dufficy, were you not?

A. Yes.

Q. At the entire hearing?

A. Yes.

Q. And you heard and understood his order when he issued it on that day, did you not?

MR. GREENÉ: Objection. Calls for legal conclusion.

Don't answer it.

MS. BARTILSON: Q. Did you hear the order that Judge Dufficy issued on that day in the courtroom?

A. Yes.

Q. Was Mr. Greene's entire interview with Mr. Knapp videotaped, as well?

A. I don't know.

Q. Was there a time when Mr. Knapp and Mr. Greene spoke privately and you were not present?

A. They may have; I don't know.

Q. Did you have any other occasions besides March 20th, 1992, to speak to Mr. Knapp?

A. Yes.

Q. When was that?

A. Sometime later.

Q. Do you recall how long later, approximately?

A. Perhaps a couple of weeks.

Q. Was this a telephone conversation or in person?

A. Telephone.

Q. Did you call him, or did he call you?

A. I believe I called him. He may have returned my call.

Q. As best you can recall, Mr. Armstrong, what did you say to Mr. Knapp in that telephone conversation, and what did he say to you?

A. In that I was performing a function at that time in Mr. Greene's office, on his order, I believe it's appropriate for me to decline to answer.

Q. Concerning a conversation with a media representative?

MR. GREENE: I don't think I agree with that.

Take a break for a second.

(Off the record.)

MR. GREENE: Go back on the record.

The witness will answer the question.

THE WITNESS: I was making an effort to determine how to obtain a copy of the video segment which was aired by CNN.

MS. BARTILSON: Q. So you asked Mr. Knapp how you could go about doing that?

A. That's the gist of the conversation.

Q. Do you recall his reply?

A. Not specifically.

Q. Did you discuss anything else with Mr. Knapp besides the obtaining of the videotape of that segment?

A. It may have been that we discussed running briefly.

Q. Did you ever have any other occasion to speak with Mr. Knapp besides the two that you've now described?

A. No.

Q. Do you know who arranged for Mr. Knapp to come to Mr. Greene's office on March 20th?

A. No.

Q. Were you working in Mr. Greene's office on March 20th, 1992?

A. Yes.

Q. When were you interviewed by Bill Horne?

A. I believe in the spring, this year.

Q. Do you recall what month?

A. Not right now.

Q. Do you recall if it was before or after the

CNN interview that you've described?

A. It was after.

Q. Do you recall if it was before or after the first time you came down to Los Angeles for a hearing in this case, after it had been transferred to Los Angeles?

A. I believe it was before.

Q. Okay. How did you come to have an interview with Mr. Horne?

A. I think that it stems from my involvement in Scientology litigation, which subject he was covering in his story.

Q. Did he contact you, or did you contact him?

A. I believe he contacted me.

Q. By telephone or in person or in writing?

A. I believe by telephone.

Q. Do you recall approximately how long before your interview with Mr. Horne he contacted you by telephone?

A. It might have been as long as a couple of weeks.

Q. And your interview was in person, was it not?

A. Yes.

Q. As best you can recall, when Mr. Horne contacted you by telephone that first time, what did he say [illegible] you and what did you say to him?

A. I have no recollection.

Q. Did you have any subsequent telephone calls with Mr. Horne before you were interviewed by him in person?

A. I believe so.

Q. Do you recall how many?

A. Perhaps two.

Q. Can you distinguish between the two conversations in your mind, or do they blur together when you think about them?

A. I distinguish them by his proximity: As he approached, he made a call.

Q. As he approached San Anselmo from some other part of the country?

A. Correct.

Q. Do you recall what was said in the first conversation?

A. No.

Q. Do you recall anything that was said by either of you in the second conversation?

A. It related to logistics, when was he arriving.

Q. Approximately how much time did you spend with him after he had arrived?

A. I believe I spent, myself, perhaps an hour and a half with him.

Q. Do you know anyone else who spent time with him?

A. Mr. Greene spent some time with him.

Q. Do you recall how much time?

A. No.

Q. Was Mr. Greene present when you were interviewed by him?

A. Some of the time.

Q. Were you present when Mr. Greene was interviewed by him?

A. Some of the time.

Q. Where did your interview take place?

A. In the office and walking into San Anselmo, having lunch, and returning.

Q. Mr. Horne arrived at your office on the day of the interview, which date you don't recall; is that right?

A. I'm sorry. I didn't get that.

Q. Did Mr. Horne arrive on his own at your office?

A. Yes.

Q. Was he by himself?

A. Yes.

Q. Did he tape-record the interview?

A. No.

Q. Did he take notes?

A. At times.

Q. Do you remember the subjects that you discussed with Mr. Horne?

A. Broadly, yes.

Q. Did you tape the interview with Mr. Horne?

A. No.

Q. Did Mr. Greene?

A. I don't know.

MR. GREENE: God may have.

MS. BARTILSON: God records everything, Ford. Best court reporter of all.

Q. What subjects do you recall discussing with Mr. Horne, speaking of broad subjects now?

A. The effect of the settlement agreements, the plight of the organization, what it would take to end its legal troubles.

Q. Anything else?

A. That's, basically, it.

Q. When you say "the effect of the settlement agreements," you are talking about agreements other than just yours?

A. Mine and others of that ilk, so both on a personal and theoretical and real level.

Q. And you are talking here about other settlement agreements that included nondisclosure agreements; is that right?

A. What was your question again?

Q. When you say "others of that ilk," you are discussing other settlement agreements that included nondisclosure provisions; is that correct?

A. Specific to the organization, yes.

Q. Did you discuss your own litigation with CSI with Mr. Horne?

A. I believe it was discussed in some form, the specifics about which I do not know.

Q. You don't know, or you don't recall?

A. I fail to see a difference in that sentence or context.

Q. Well, if you don't know something was discussed, you could not know it by never having been there or it never having come up.

A. But you know that I was there, and I said it had come up. So we've eliminated those two from the definition, at least, the distinction between "know" and "recall" in that sentence.

In any case, if it would speed things: I do not recall.

Q. Did you discuss with Mr. Horne any of your experiences that you had had with any Church of Scientology or with Mr. Hubbard prior to 1986?

A. I only met him in 1992.

Q. Right.

Did you discuss with him any experiences you had had with the Church of Scientology or Mr. Hubbard, and dating those experiences back to before 1986?

A. I have no recollection of any specific experience being discussed.

Q. Might have; might not have; you just don't recall?

MR. GREENE: Objection.

You can answer the question.

THE WITNESS: Yes.

MS. BARTILSON: Q. But you discussed the settlement agreements with him; is that right?

A. That is one of the things which I recall at this time.

Q. Did you give him a copy of your settlement agreement?

A. I don't believe so.

Q. Did you give him any documents?

A. I may have.

Q. Do you recall, as you sit here today, any

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documents that you know you gave to him?

A. No.

Q. Did your lawyer give him any documents?

A. I don't know.

Q. If you had given Mr. Horne any documents, is there anywhere you might have made note of that or kept a record of it in some way?

A. There could be.

Q. Where would that be?

A. I don't know.

Q. You might have made such a note, but you don't know where that note would be?

MR. GREENE: Okay. Enough. Speculation.

Don't answer any more of these "if you"-type questions.

MS. BARTILSON: Well, I'm trying to find out if there's anything in existence that could refresh the witness's recollection, and I think I'm entitled to that.

MR. GREENE: Then ask him. No more speculative questions.

Don't answer the "if," speculative, questions.

MS. BARTILSON: Q. When you gave documents to reporters or other members of the media, Mr. Armstrong, has it been your custom and practice to make notes of that fact?

MR. GREENE: No foundation.

Don't answer the question.

MS. BARTILSON: Don't answer the question because no foundation?

MR. GREENE: Right. No foundation for it -- I'm sorry.

It assumes a fact not in evidence, which is a similar objection. I will add that.

Absolutely no foundation of Mr. Armstrong giving documents to reporters, the foundation of Mr. -- of Mr. Armstrong providing an interview.

MS. BARTILSON: Mr. Greene, you told me I wasn't supposed to talk about things that had already been discussed in other depositions, and he already testified about giving documents to reporters in other depositions.

MR. GREENE: Great. Then bring it up and put it in front of him.

MS. BARTILSON: I thought you didn't want me to discuss that again. Why should we do it twice? It's pointless. The foundation has been laid in previous depositions.

MR. GREENE: Not in this case. Sorry you are confused, Counsel.

MS. BARTILSON: Q. Have you ever given documents to any reporters or other representatives of the media, Mr. Armstrong?

A. Yes.

Q. Have you done that on more than one occasion?

A. Yes.

Q. Approximately how many times would you say you've done that?

A. Seventeen.

Q. Is that an approximate figure, or is that an exact figure?

A. It depends on your viewpoint.

Q. As you sit here today, you can independently recall 17 times when you gave documents to representatives of the media; is that right?

A. No, that mischaracterizes my testimony.

Q. Okay.

A. Approximately 17, the specifics of which are another matter.

Q. Have you kept notes or records concerning any of those approximately 17 times when you gave documents to representatives of the media?

A. Some.

Q. On those 17 occasions, or approximately 17 occasions, when you have given documents to representatives of the media, have the documents concerned in any way the Church of Scientology International or any related entity or individual?

A. Yes.

Q. On all of the occasions that we're discussing or just some of them?

A. Some.

Q. Of the 17, how many?

A. Eleven.

Q. Looking only at those 11 times when you gave documents to representatives of the media, did you make notes concerning the documents that you were giving away?

A. I have no recollection of making a note.

Q. On any of those occasions?

A. Right.

Q. Getting back to your interview with Mr. Horne: Did you discuss the Breckenridge opinion with him?

A. As long as it is understood by my answer that I am willing to discuss the Breckenridge opinion with anyone at any time: I have no recollection of so doing with Mr. Horne.

MR. GREENE: Bonus answer.

MS. BARTILSON: Q. So you probably did, but yo[illegible]n't recall?

MR. GREENE: Don't answer the question. Calls for speculation. You've already answered it; it is asked and answered also.

MS. BARTILSON: Q. Do you recall any other -- Forget that.

You said that you discussed with Mr. Horne the effect of the settlement agreement.

Do you recall specifically anything you said to Mr. Horne concerning that?

A. Not specifically.

Q. Do you recall in general anything that you said to Mr. Horne concerning that?

A. Generally, that they obstruct justice, that they are illegal, that I have a right to speak out against them, to divulge the contents, which I see as an obstruction of justice and illegal, and that I have a right to correct the injustices wrought by those rotten agreements.

Q. Good pun, Gerry.

And you also said that you discussed with him what it would take to end the organization's legal troubles.

Can you recall anything specific that you discussed with him concerning that?

A. That they must fully and honestly repudiate fair game and associated, related antisocial policies and they must settle openly and fairly.

Q. Anything else?

A. No.

Q. Do you recall anything that Mr. Greene said to Mr. Horne during the time that you were present while Mr. Greene was being interviewed by Mr. Horne?

A. No.

Q. Do you recall any of the subjects that he discussed?

A. I have a recollection of the settlement agreements being discussed.

Q. Do you recall what Mr. Greene said about the settlement agreements?

A. No.

Q. Any other subject that you can recall Mr. Greene discussing with Mr. Horne?

A. No.

Q. Have you spoken with Mr. Horne since your interview?

A. Yes.

Q. When was that?

A. Perhaps in July.

Q. '92?

CERTIFICATE OF REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of California, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said action.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my signature this______day of OCT 23 1992,19____

Larry Bostow

CERTIFIED SHORTHAND REPORTER
STATE OF CALIFORNIA

MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

PLAINTIFF'S EXHIBIT
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"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block.

amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

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Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast or to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose concerning any Church of Scientology, any financial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(Tx), presently on appeal in the Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenable to service of any such subpoena in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwithstanding the provisions of Paragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts required by the terms hereof to be undertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement, representation or promise to the other party regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

Witness

Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

M. J. Flyn

MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

HUB LAW OFFICES
Ford Greene, Esquire
California Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Plaintiffs
VICKI J. AZNARAN and
RICHARD N. AZNARAN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN,

Plaintiffs,

vs.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTER CLAIM

No. CV-88-1786-JMI(Ex)

DECLARATION OF GERALD ARMSTRONG IN OPPOSITION TO MOTION TO EXCLUDE EXPERT TESTIMONY

I, GERALD ARMSTRONG, declare:

1. I was a Scientologist from 1969 to 1981 and held many organizational positions during that period. I was also the defendant in an action entitled Church of Scientology vs. Armstrong, in Los Angeles Superior Court. Judge Breckenridge's opinion in that case was affirmed by the California Court of Appeal on July 29, 1991.

2. Throughout 1980 and 1981 I was L. Ron Hubbard's biographical researcher and archivist. During that period I read

and studied his letter dated September 7, 1955 to the Federal Bureau of Investigation and I provided a copy of it to writer, Omar V. Garrison for his use in a biography of Hubbard. A true and correct copy thereof is attached hereto as Exhibit 1.

3. While I was a Scientologist I read and studied L. Ron Hubbard's Technical Bulletin of July 22, 1956. It was published in the 1970's in bound volumes of Hubbard's "technical" writings and has continued to be published in later volumes up to the present time. A true and correct copy is attached hereto as Exhibit 2.

Under penalty of perjury, pursuant to the laws of the United States I hereby declare that the foregoing is true and correct. Executed this 26th day of August, 1991, at San Anselmo, California.

GERALD ARMSTRONG

EXHIBIT 1 [illegible]

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RON HUBBARD. D.[illegible] PH.

Box 242
Silver Spring, Md.
Sept. 7, 1955

TO THE FEDERAL BUREAU OF INVESTIGATION
Communist Activities

Gentlemen: L. Ron Hubbard

A series of sudden insanities and disturbances in Dianetic and Scientology groups reached seven last week on the West Coast.

In Atomic Energy's Richland, Washington a young boy who had never been treated with Dianetics or Scientology but whose father Verne McAdams is the local Scientology group leader in Richland suddenly and mysteriously became insane, so suddenly and so thoroughly that the head of the institution for insane in Richland, evidently of good security, suspects the use of LSD, the insanity producing drug so favored by the APA. Two of our ministers in that area at my request went further into the situation and by means we will not detail recovered from the boy information of which his family had been entirely ignorant. On instructions to find the "other psychiatrist" our ministers by this means located an unsuspected one in Atomic Energy's front yard, a man who had been the construction company doctor during the building of Richland and who had then turned psychiatrist and whose name strangely enough is Menkowski (sp?). The boy had evidently had some association with this man before this sudden onset.

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With this information not yet cool long distance from San Francisco Bay Area notified us of the sudden and inexplicable descent into insanity of one Wanda Collins. She is ravingly insane and yet was completely sane a day ago. Her people and our people cannot account for a missing nine hour period just before this onset. You should be intefested in this because Wanda Collins resigned from the Communist Party some time ago, foreswore it and tried to make amends with Scientology and would be a logical candidate for an LSD attack.

SEE REVERSE SIDE FOR ACD. DISSEMINATION.

RECORDED-102

Concurrently with this in Phoenix Arizona

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our Mr. Edd Clark was suddenly arrested "for practising medicine without a license", and this is very odd because he is the first Dianeticist or Scientologist in five years of world wide operation to be so accused. He could not have been practising medicine because Dianetics and Scientology seek only to assist able people to improve their talents and have no interest in sickness or insanity. He was arrested and without any search warrant all his papers and letters were seized even down to blank typewriter paper and were carried away, a fact which places this matter quite solidly in the field of the F.B.I.. Mr. Clark is a half-blind deaf old man. He was once a chiropractor but has long since ceased to be one. He was told by the County Attorney that the County Attorney meant to "get to the bottom of this thing about Hubbard and Scientology."

The "bottom of the thing" can be found in "Who Knows and What" and "Who's Who in the East" in the local library or from bookstores which carry my books. My own life is about as hard to investigate as a white rock on a summer's day.

It is not uncommon in the past five years to have judges and attorneys mad-dogged at about what a terrible person I am and how foul is Scientology. Persons never named or available step in, spread violent tales and accusations and vanish. This mad-dogging has evidently been done at this County Attorney to prompt such a foolish action. This makes the third civil official in that area to go off half-cocked about Scientology. When it is all done and Scientology has been neatly ruined by the newspapers in the area and when all the charges have been quashed there is no one from whom any recompense can be drawn. "It was all a mistake"...

In 1950 the Dianetics Foundations were violently attacked and discredited. The 200 Foundation employees, when screened, yielded 35 Communist-connected persons. That done the commotion stopped. After three quiet years in the Phoenix area we forwarded to the Defense Department data on brain-washing. Instantly we became the subject of violence. Four people were seized by psychiatrists in that area to date and to this day so far as I know are still being held, their sanity shattered.

After we so informed the Defense Department about brain-washing technologies in our hands and offered them, we have been in a state of siege. Understand that we accuse the D.D. of nothing.

Psychiatrists as far north as Seattle have said they were "out to get every Scientologist." An Internal Revenue official has used those very words before witnesses and said he was going to get to the bottom of this thing in Phoenix. People in suspicious condition were sent from one place in Southern California to be "treated by Scientology" for insanity and yet we have no interest in treating anyone, especially the insane. Now two more people go suddenly and inexplicably insane in widely different places both the same way. All manner of defamatory rumors have been scattered around about me, questioning even my sanity which is fortunately a matter of good record with the Navy as by statement "having no psychotic or neurotic symptoms whatsoever."

I have a wife and three little kids. I have a good many thousand people scattered around the world trying to help their fellow man and I am responsible for these people. I am trying to turn out some monographs on matters in my field of nuclear physics and psychology for submission to the government on the subject of alleviating some of the distress of radiation burns, a project I came east to complete. This lawless and brutal attack on Scientology now spreading evidently to three states will probably not end until a great deal of injustice and human suffering has occurred.

Would you please discover for me or for yourselves the exact names and whereabouts of the persons whose statements inflamed the County Attorney in Phoenix in arresting a half-blind old man and seizing all his books and papers. If we have those names and if we trace them back we will have someplace to start on this madness

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which now reaches into three states. Can you do this for us?

I am getting additional copies of the material which was offered to the Defense Department since that agency has not acknowledged or returned anything shipped to it about brain-washing and when I have these copies I will send one to you for this is the only starting place I know about for this outbreak and the matter, while far from conclusive at least tells me that something went astray which was dangerous in the wrong hands.

Could you please have your Phoenix office obtain the names of the people who defamed us to the County Attorney? Your Bay Area and Richland offices have already been apprised of the incidents in those areas.

L. Ron Hubbard

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EXHIBIT 2

HUBBARD COMMUNICATIONS OFFICE
217a Kensington High Street, London W.8

RUSH

July 22nd, 1956

To U.S. ONLY Julia Lewis, Dick Steves, L. Ron Hubbard, Jnr.

To England ONLY Association Secretary (Jack Parkhouse)
Director of Processing (Ann Walker)
Director of Training (Dennis Stephens)

Staff Auditors, Instructors and Auditors close to Operation only.

TECHNICAL BULLETIN OF 22 JULY 1956

I feel the urge to communicate to you the best news since 1950.

I have whipped the problems of the whole track and memory of the past and can resolve the worst cases we have ever had. That is a huge statement *but* I have solved and can untangle in an intensive the problems of the vacuum and havingness plus memory and health and have just done so. Hence the exuberance.

Also, other auditors can solve these in a case as well. NIBS has just cracked two six-year-standing Black Fives using some of this material and Herbie Parkhouse has had considerable luck with solids.

We are now capable of solving Book One style cases to the extreme level of clear.

No wild burst of enthusiasm is here intended. I have to put the finishing touches on a lot of things and the process is still slow—25 to 75 hours. But I've now done it and seen it done to worse cases than any you've had. And that's fact!

Okay. It's not simple. It requires a minute understanding of Book One. It would take me 50 pages to explain all I've lately found about vacuums. You haven't seen the last of me or of study, but you will have seen the last of unsuccessful cases providing only that we have time and environment in which to audit them.

We can make homo novis. (AND give a grin to those who kept standing around bleating, "Where are the clears?")

We know more about life now than life does—for a fact, since *it* was reaching, we can communicate about the reactions.

The process is concerned with "making it solid" combined with effects. It isn't easy. It is wonderfully complex and delicate. But it *has* been done. And it is being done.

Our cases gained but sometimes slumped. Why? Because an electronic vacuum restimulated on the track after sessions, and robbed the case's havingness.

A vacuum isn't a hole. It's a collapsed bank. Every lifetime bank is collapsed into a vacuum.

The formula is—

1. Run pc on start-change and stop for *hours* until he is under auditor's control, in session and (often) exteriorized.
2. Then run him with commands "What are you looking at?" "Good." "Make it solid."

   He will eventually hit a vacuum. (He'd hit it faster on "Recall a can't have" but it's too fast.) Here's the tangle. The vacuum is a super-cold mass or an electric shock. This "drank up" bank electronically (brainwashed him). The energy drank turned black. Hence black cases. (Does not apply only to black cases however.)
3. Run, interspersed with solids and "objective can't have" on the room, "Tell me an effect object (that drank bank) could *not* have on you," and "Tell me an effect you could have on object." Object may be electrodes or supercold plate or even a supercold glass.

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Caution, handle one vacuum at a time. These vacuums go back for 76 Trillion years. They were the original brainwash thetans did to one another, then psychiatrists (on the whole track) did expertly (modern psychiatrists are *punks*, modern shock too feeble to do more than restimulate old vacuums).

Take the vacuum that comes up running solids, or even "Recall a can't have", whatever it is and solve it as above.

This is delicate auditing. If you restimulate a vacuum too hard, the whole track groups on it.

Read Book One. Add vacuums instead of word groupers, use above and you'll probably get through to success. Nibs did and I had given him less than you have here. Of course, he's one of the best auditors in the business, so go easy. And Herbie Parkhouse is no slouch.

CAUTIONARY

This is true—

1. We have created the *permanent* stable clear.
2. In creating him we have a homo novis in the full sense, not just an Operating Thetan.
3. We now know more than life. An oddity indeed!
4. We now know more about psychiatry than psychiatrists. We can brainwash faster than the Russians (20 secs to total amnesia against three years to slightly confused loyalty).
5. We can undo whatever psychiatrists do, even the tougher grade from away back. We can therefore undo a brainwash in 25 to 75 hours.
6. We can create something better than that outlined and promised in Book One.

BUT

1. We need to know more and be more accurate than ever before about the time track and auditing. I have not given a thousandth of what I know about this.
2. We have a new game but also new responsibilities amongst men.
3. This data in the wrong hands before we are fully prepared could raise the Devil Eternally.
4. Because we know more than the Insanity Gang, we're not fighting them.
5. Because we can undo what we do, we must retain a fine moral sense, tougher by far than any of the past.
6. We can create better than in Book One now *only* if we know Book One and know our full subject.

AND WE DO NOT YET KNOW ALL THE SAFETY PRECAUTION TO BE USED.

I will be giving this data in full at the Games Congress, Shoreham Hotel, WASHINGTON, D.C., August 31st, to September 3rd, 1956.

The exact regimen of this will be SLP 8 and will include the total picture of separating valences from bodies (which must still be done by the auditor, a formula I now have).

I have given you this data in this bulletin at this time because now I know I know and I want you to share in seeing the surge of vision which will be our future.

L. RON HUBBARD

P.S. (Actually, contrary to rumor, it *hasn't* all been done before. If it had been, the guy who is saying it has would be clear!)

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MUTUAL RELEASE OF ALL CLAIMS AND SETTLEMENT AGREEMENT

1. This Mutual Release of All Claims and Settlement Agreement is made between Church of Scientology International (hereinafter "CSI") and Gerald Armstrong, (hereinafter "Plaintiff") Cross-Complainant in Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153. By this Agreement, Plaintiff hereby specifically waives and releases all claims he has or may have from the beginning of time to and including this date, including all causes of action of every kind and nature, known or unknown for acts and/or omissions against the officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel of CSI as well as the Church of Scientology of California, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Religious Technology Center, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; all Scientology and Scientology affiliated organizations and entities and their officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; Author Services, Inc., its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel; L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and its trustee; and Mary Sue Hubbard, (all hereinafter collectively referred to as the

"Releasees"). The parties to this Agreement hereby agree as follows:

2. It is understood that this settlement is a compromise of doubtful and disputed claims, and that any payment is not to be construed, and is not intended, as an admission of liability on the part of any party to this Agreement, specifically, the Releasees, by whom liability has been and continues to be expressly denied. In executing this settlement Agreement, Plaintiff acknowledges that he has released the organizations, individuals and entities listed in the above paragraph, in addition to those defendants actually named in the above lawsuit, because among other reasons, they are third party beneficiaries of this Agreement.

3. Plaintiff has received payment of a certain monetary sum which is a portion of a total sum of money paid to his attorney, Michael J. Flynn. The total sum paid to Mr. Flynn is to settle all of the claims of Mr. Flynn's clients. Plaintiff's portion of said sum has been mutually agreed upon by Plaintiff and Michael J. Flynn. Plaintiff's signature below this paragraph acknowledges that Plaintiff is completely satisfied with the monetary consideration negotiated with and received by Michael J. Flynn. Plaintiff acknowledges that there has been a block settlement between Plaintiff's attorney, Michael J. Flynn, and the Church of Scientology and Churches and entities related to the Church of Scientology, concerning all of Mr. Flynn's clients who were in litigation with any Church of Scientology or related entity. Plaintiff has received a portion of this block.

amount, the receipt of which he hereby acknowledges. Plaintiff understands that this amount is only a portion of the block settlement amount. The exact settlement sum received by Plaintiff is known only to Plaintiff and his attorney, Michael J. Flynn, and it is their wish that this remain so and that this amount remain confidential.

Signature line for Gerald Armstrong

4. For and in consideration of the above described consideration, the mutual covenants, conditions and release contained herein, Plaintiff does hereby release, acquit and forever discharge, for himself, his heirs, successors, executors, administrators and assigns, the Releasees, including Church of Scientology of California, Church of Scientology International, Religious Technology Center, all Scientology and Scientology affiliated organizations and entities, Author Services, Inc. (and for each organization or entity, its officers, agents, representatives, employees, volunteers, directors, successors, assigns and legal counsel); L. Ron Hubbard, his heirs, beneficiaries, Estate and its executor; Author's Family Trust, its beneficiaries and trustee; and Mary Sue Hubbard, and each of them, of and from any and all claims, including, but not limited to, any claims or causes of action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153 and all demands, damages, actions and causes of actions of every kind and nature, known or unknown,

for or because of any act or omission allegedly done by the Releasees, from the beginning of time to and including the date hereof. Therefore, Plaintiff does hereby authorize and direct his counsel to dismiss with prejudice his claims now pending in the above referenced action. The parties hereto will execute and cause to be filed a joint stipulation of dismissal in the form of the one attached hereto as Exhibit "A".

A. It is expressly understood by Plaintiff that this release and all of the terms thereof do not apply to the action brought by the Church of Scientology against Plaintiff for Conversion, Fraud and other causes of action, which action has already gone to trial and is presently pending before the Second District, Third Division of the California Appellate Court (Appeal No. B005912). The disposition of those claims are controlled by the provisions of the following paragraph hereinafter.

B. As of the date this settlement Agreement is executed, there is currently an appeal pending before the California Court of Appeal, Second Appellate District, Division 3, arising out of the above referenced action delineated as Appeal No. B005912. It is understood that this appeal arises out of the Church of Scientology's complaint against Plaintiff which is not settled herein. This appeal shall be maintained notwithstanding this Agreement. Plaintiff agrees to waive any rights he may have to take any further appeals from any decision eventually reached by the Court of Appeal or any rights he may have to oppose (by responding brief or any other means) any further appeals taken by the Church of

Scientology of California. The Church of Scientology of California shall have the right to file any further appeals it deems necessary.

5. For and in consideration of the mutual covenants, conditions and release contained herein, and Plaintiff dismissing with prejudice the action Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153, the Church of Scientology of California does hereby release, acquit and forever discharge for itself, successors and assigns, Gerald Armstrong, his agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by Gerald Armstrong from the beginning of time to and including the date hereof.

6. In executing this Agreement, the parties hereto, and each of them, agree to and do hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. Further, the undersigned hereby agree to the following:

A. The liability for all claims is expressly denied by the parties herein released, and this final compromise and settlement thereof shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. Plaintiff has been fully advised and understands that the alleged injuries sustained by him are of such character that the full extent and type of injuries may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, further damages may be sustained by Plaintiff; nevertheless, Plaintiff desires by this document to forever and fully release the Releasees. Plaintiff understands that by the execution of this release no further claims arising out of his experience with, or actions by, the Releasees, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by him or on his behalf, against the Releasees.

C. Plaintiff agrees to assume responsibility for the payment of any attorney fee, lien or liens, imposed against him past, present, or future, known or unknown, by any person, firm, corporation or governmental entity or agency as a result of, or growing out of any of the matters referred to in this release. Plaintiff further agrees to hold harmless the parties herein released, and each of them, of and from any liability arising therefrom.

D. Plaintiff agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing or to broadcast [illegible] to assist another to create, write, film or video tape or audio tape any show, program or movie, or to grant interviews or discuss with others, concerning their experiences with the Church of Scientology, or concerning their personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff further agrees that he will maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. Plaintiff expressly understands that the non-disclosure provisions of this subparagraph shall apply, inter alia, but not be limited, to the contents or substance of his complaint on file in the action referred to in Paragraph 1 hereinabove or any documents as defined in Appendix "A" to this Agreement, including but not limited to any tapes, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. The attorneys for Plaintiff, subject to the ethical limitations restraining them as promulgated by the state or federal regulatory associations or agencies, agree not to disclose any of the terms and conditions of the settlement negotiations, amount of the settlement, or statements made by either party during settlement conferences. Plaintiff agrees that if the terms of this paragraph are breached by him, that CSI and the other Releasees would be entitled to liquidated damages in the amount of $50,000 for each such breach. All monies received to induce or in payment for a breach of this Agreement, or any part thereof, shall be held in a constructive trust pending the outcome of any litigation over said breach. The amount of liquidated damages herein is an estimate of the damages that each party would suffer in the event this Agreement is breached. The reasonableness of the amount of such damages are hereto acknowledged by Plaintiff.

E. With exception to the items specified in Paragraph 7(L), Plaintiff agrees to return to the Church of Scientology International at the time of the consummation of this Agreement, all materials in his possession, custody or control (or within the possession, custody or control of his attorney, as well as third parties who are in possession of the described documents), of any nature, including originals and all copies or summaries of documents defined in Appendix "A" to this Agreement, including but not limited to any tapes, computer disks, films, photographs, recastings, variations or copies of any such materials which concern or relate to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above, all evidence of any nature, including evidence obtained from the named defendants through discovery, acquired for the purposes of this lawsuit or any lawsuit, or acquired for any other purpose concerning any urch of Scientology, any nancial or administrative materials concerning any Church of Scientology, and any materials relating personally to L. Ron Hubbard, his family, or his estate. In addition to the documents and other items to be returned to the Church of Scientology International listed above and in Appendix "A", Plaintiff agrees to return the following:

(a) All originals and copies of the manuscript for the work "Excalibur" written by L. Ron Hubbard;

(b) All originals and copies of documents commonly known as the "Affirmations" written by L. Ron Hubbard; and

(c) All documents and other items surrendered to the Court by Plaintiff and his attorneys pursuant to Judge Cole's orders of August 24, 1982 and September 4, 1982 and all documents and other items taken by the Plaintiff from either the Church of Scientology or Omar Garrison. This includes all documents and items entered into evidence or marked for identification in Church of Scientology of California v. Gerald Armstrong, Case No. C 420 153. Plaintiff and his attorney will execute a Joint Stipulation or such other documents as are necessary to obtain these documents from the Court. In the event any documents or other items are no longer in the custody or control of the Los Angeles Superior Court, Plaintiff and his counsel will assist the Church in recovering these documents as quickly as possible, including but not limited to those tapes and other documents now in the possession of the United States District Court in the case of United States v. Zolin, Case No. CV

85-0440-HLH(T[illegible] presently on appeal in [illegible] Ninth Circuit Court of Appeals. In the event any of these documents are currently lodged with the Court of Appeal, Plaintiff and his attorneys will cooperate in recovering those documents as soon as the Court of Appeal issues a decision on the pending appeal.

To the extent that Plaintiff does not possess or control documents within categories A-C above, Plaintiff recognizes his continuing duty to return to CSI any and all documents that fall within categories A-C above which do in the future come into his possession or control.

F. Plaintiff agrees that he will never again seek or obtain spiritual counselling or training or any other service from any Church of Scientology, Scientologist, Dianetics or Scientology auditor, Scientology minister, Mission of Scientology, Scientology organization or Scientology affiliated organization.

G. Plaintiff agrees that he will not voluntarily assist or cooperate with any person adverse to Scientology in any proceeding against any of the Scientology organizations, individuals, or entities listed in Paragraph 1 above. Plaintiff also agrees that he will not cooperate in any manner with any organizations aligned against Scientology.

H. Plaintiff agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the Scientology Churches, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Plaintiff shall not make himself amenabl[illegible] service of any such s[illegible]na in a manner which invalidates the intent of this provision. Unless required to do so by such subpoena, Plaintiff agrees not to discuss this litigation or his experiences with and knowledge of the Church with anyone other than members of his immediate family. As provided hereinafter in Paragraph 18(d), the contents of this Agreement may not be disclosed.

I. The parties hereto agree that in the event of any future litigation between Plaintiff and any of the organizations, individuals or entities listed in Paragraph 1 above, that any past action or activity, either alleged in this lawsuit or activity similar in fact to the evidence that was developed during the course of this lawsuit, will not be used by either party against the other in any future litigation. In other words, the "slate" is wiped clean concerning past actions by any party.

J. It is expressly understood and agreed by Plaintiff that any dispute between Plaintiff and his counsel as to the proper division of the sum paid to Plaintiff by his attorney of record is between Plaintiff and his attorney of record and shall in no way affect the validity of this Mutual Release of All Claims and Settlement Agreement.

K. Plaintiff hereby acknowledges and affirms that he is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that his ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

L. Notwi[illegible]anding the provisions [illegible]aragraph 7(E) above, Plaintiff shall be entitled to retain any artwork created by him which concerns or relates to the religion of Scientology, L. Ron Hubbard or any of the organizations, individuals or entities listed in Paragraph 1 above provided that such artwork never be disclosed either directly or indirectly, to anyone. In the event of a disclosure in breach of this Paragraph 7(L), Plaintiff shall be subject to the liquidated damages and constructive trust provisions of Paragraph 7(D) for each such breach.

8. Plaintiff further agrees that he waives and relinquishes any right or claim arising out of the conduct of any defendant in this case to date, including any of the organizations, individuals or entities as set forth in Paragraph 1 above, and the named defendants waive and relinquish any right or claim arising out of the conduct of Plaintiff to date.

9. This Mutual Release of All Claims and Settlement Agreement contains the entire agreement between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. This Agreement may be amended only by a written instrument executed by Plaintiff and CSI. The parties hereto have carefully read and understand the contents of this Mutual Release of All Claims and Settlement Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically

incorporated he[illegible] shall be deemed to in [illegible] way exist or bind any of the parties hereto.

10. Plaintiff agrees that he will not assist or advise anyone, including individuals, partnerships, associations, corporations, or governmental agencies contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

11. The parties to this Agreement acknowledge the following:

A. That all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will;

B. That all parties have conducted sufficient deliberation and investigation, either personally or through other sources of their own choosing, and have obtained advice of counsel regarding the terms and conditions set forth herein, so that they may intelligently exercise their own judgment in deciding whether or not to execute this Agreement; and

C. That all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

12. Each party shall bear its respective costs with respect to the negotiation and drafting of this Agreement and

all acts requi[illegible] by the terms hereof to [illegible]ndertaken and performed by that party.

13. To the extent that this Agreement inures to the benefit of persons or entities not signatories hereto, this Agreement is hereby declared to be made for their respective benefits and uses.

14. The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

15. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

16. In the event any provision hereof be unenforceable, such provision shall not affect the enforceability of any other provision hereof.

17. All references to the plural shall include the singular and all references to the singular shall include the plural. All references to gender shall include both the masculine and feminine.

18.(A) Each party warrants that they have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein and in executing this Agreement.

(B) The parties hereto (including any officer, agent, employee, representative or attorney of or for any party) acknowledge that they have not made any statement, representation [illegible] promise to the other pa[illegible] regarding any fact material to this Agreement except as expressly set forth herein. Furthermore, except as expressly stated in this Agreement, the parties in executing this Agreement do not rely upon any statement, representation or promise by the other party (or of any officer, agent, employee, representative or attorney for the other party).

(C) The persons signing this Agreement have the full right and authority to enter into this Agreement on behalf of the parties for whom they are signing.

(D) The parties hereto and their respective attorneys each agree not to disclose the contents of this executed Agreement. Nothing herein shall be construed to prevent any party hereto or his respective attorney from stating that this civil action has been settled in its entirety.

(E) The parties further agree to forbear and refrain from doing any act or exercising any right, whether existing now or in the future, which act or exercise is inconsistent with this Agreement.

19. Plaintiff has been fully advised by his counsel as to the contents of this document and each provision hereof. Plaintiff hereby authorizes and directs his counsel to dismiss with prejudice his claims now pending in the action entitled Gerald Armstrong v. Church of Scientology of California, Los Angeles Superior Court, Case No. 420 153.

20. Notwithstanding the dismissal of the lawsuit pursuant to Paragraph 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain

jurisdiction to [illegible]force the terms of this [illegible]eement. This Agreement may be enforced by any legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment where appropriate. In the event any party to this Agreement institutes any action to preserve, to protect or to enforce any right or benefit created hereunder, the prevailing party in any such action shall be entitled to the costs of suit and reasonable attorney's fees.

21. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, on the date opposite their names.

Dated: December 6, 1986

GERALD ARMSTRONG

J-Ann A Richardson
Witness

Michael
Witness

Dated: 12/6/86

APPROVED AS TO FORM AND CONTENT:

M. J. Flynn
MICHAEL J. FLYNN
Attorney for
GERALD ARMSTRONG

Dated: December 11, 1986

Heber C. Jentzsch
for
CHURCH OF SCIENTOLOGY
INTERNATIONAL

APPENDIX A

1. As used herein, the term "document" or "documents" include but are not limited to all originals, file copies and copies not identical to the original, no matter how prepared, of all writings, papers, notes, records, books and other tangible things including, by way of example and not of limitation, the following:

a. Memoranda, notes, calendars, appointment books, shorthand or stenographer's notebooks, correspondence, letters and telegrams, whether received, sent, filed or maintained internally;

b. Drafts and notes, whether typed, penciled or otherwise, whether or not used;

c. Minutes, reports and summaries of meetings;

d. Contracts, agreements, understandings, commitments, proposals and other business dealings;

e. Recordings, transcriptions and memoranda or notes made of any telephone or face-to-face oral conversations between or among persons;

f. Dictated tapes or other sound recordings;

g. Computer printouts or reports and the applicable program or programs therefor;

h. Tapes, cards or any other means by which data are stored or preserved electrically, electronically, magnetically or mechanically, and the applicable program or program therefor (from which plaintiff may reproduce or cause to be reproduced such data in written form);

i. Pictures, drawings, photographs, charts or other graphic representations;

j. Checks, bills, notes, receipts, or other evidence of payment;

k. Ledgers, journals, financial statements, accounting records, operating statements, balance sheets and statements of account.

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	Case No. 152229 DECLARATION OF LAWRENCE E. HELLER

I, LAWRENCE E. HELLER, hereby declare:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and am a partner in the law firm of Turner, Gerstenfeld, Wilk & Tigerman. I have personal knowledge of the matters set forth below, and if called upon to do so, could and would competently testify thereto.

2. In 1986 I assisted various Churches of Scientology to achieve the settlement of a series of lawsuits with attorney

Michael J. Flynn and a several other attorneys around the country, who represented a number of plaintiffs and witnesses against those Churches of Scientology. Gerald Armstrong was one of these plaintiffs.

3. To finalize this settlement with Armstrong, I met with Mr. Armstrong and his attorney, Michael Flynn, in Los Angeles on December 6, 1986. I was present when Mr. Armstrong, in the presence of his attorney signed the Settlement Agreement with the Church of Scientology International. This meeting and signing was video taped.

4. Attached as Exhibit A to this Declaration is a copy of the video tape made at that meeting. I have reviewed this tape and state that it accurately depicts all of the events of that meeting.

5. Attached as Exbit B is a copy of the transcript of that video tape. I have reviewed this transcript against the video, itself, and state that it is an accurate transcription of the video.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of March, 1992, at Los Angeles, California.

Lawrence E. Heller

See Separate Notice
of Lodging & Lodging
for Exhibit A

Exhibit A

Exhibit B

TRANS PT OF GERALD ARMSTRONG V. O RECORDING OF SETTLEMENT AGREEMENT SIGNING

Appearances: December 6, 1986

LH: Larry Heller

GA: Gerald Armstrong

MF: Michael Flynn

JR: Jo Ann Richardson (Notary)

MS: Michael Sutter (Witness)

BEGINNING OF TAPE

LH This is fine, that covers everything and um, we're alright.

MF How many you got there?

LH Well I got the two affidavits for, then I got these here which, um, we don't have to sign these on video tape - we can do it if you like...

MF It makes no difference to me.

LH It's all the same to me too...

LH OK. It's now 9:04, ah, pm on December 6 1986 and to my left is Gerald Armstrong and next to him Michael J. Flynn. Um, Mr. Armstrong, I understand Mr. Flynn is your attorney here representing you today, is that correct?

GA Right.

LH OK. Ah, Mr. Armstrong I'm going to ask you to sign three documents, ah, a mutual release of all claims and settlement agreement, and two separate affidavits. Prior to doing so however, I would like to ask you some questions with regard to those documents, um-hum, excuse me, which I would like you to answer freely and honestly if you would. Ah, first of all have you had a chance to, ah, completely and comprehensively review and read these documents?

GA Yeah.

LH OK. Have you had a chance to discuss these documents with your attorney, Mr. Flynn?

GA Yes.

LH Has Mr. Flynn explained these documents as well the legal and factual ramifications to you, legal and practical ramifications to you to your satisfaction?

GA Uh, I think so, yes.

LH OK. Well do you have any question of that whatsoever?

GA No, I have no current questions about it.

LH OK, very good. You are going to sign these of your own free will?

GA Yes.

LH OK. You are not suffering from any duress or coercion which is compelling you to sign these documents?

GA No.

LH Alright, you are not presently under the influence of alcohol or any medication, prescription or otherwise, which would impede your ability to comprehend the um, legal and factual intent of these documents?

GA No.

LH Um, you may have noticed in reviewing the settlement agreement that, ah, you are part of a what we have generically described as a universal settlement, ah, what I mean by that is and you probably know that independently as well, as you're smiling. What I mean by that...

GA ... no, just that, that's the same as a global settlement, right?

LH It's the same thing. Exactly.

GA Got it.

LH I said generically described so far, universal, global, all encompassing - whatever you like, but the intent of it is that, um, you are one of many claimants uh, who uh, contend that they have claims against the Church of Scientology as well as related and unrelated entities and individuals. Some of those claimants have litigation such as you do pending against the Church of Scientology, some of them don't.

Uh, as you also may or may not know, uh, one lump sum payment is being made to Mr. Flynn. Um, Mr. Flynn is then going to be distributing from that lump sum certain sums to some or all of these claimants...

MF After I go to Rio.

LH After he goes to Rio, exactly. Neither I nor my clients know what the nature or amount that that distribution is um, and we don't want to know. Uh, what's important to us is that you realize that it's a universal/global settlement; that you realize that you are getting paid a certain amount out of that settlement, if you in fact are, and I'm making the assumption you are, but that, uh, and also that you tell me while we're now on video tape that you are happy and satisfied with the amount that Mr. Flynn has promised to pay you.

(phone rings and is answered)

GA Yes.

LH OK, now, other than any representations which Mr. Flynn has made to you in order to uh, get you to sign this uh, have any other representations been made by either myself or my clients or anything else which has compelled you to sign these documents?

Now, what I'm saying to you is there are obviously representations in the documents...

GA Correct.

LH Mr. Flynn has spoken with you - he has said you will get this and that for the, uh, whether money or other consideration for the signing of these documents...

GA Right.

LH OK, now I want to make sure that were there any other representations made to you of anything you would get in consideration for the signing of these documents.

GA Not in terms of what I would get: no.

LH OK. Along those same lines - As I said this is a universal settlement - ah, accordingly, ah, it is possible that some of the other parties may not settle for some reason, and I want you to be aware of the fact that if in fact one of those other, one or more of those other parties do not settle, this settlement falls through. You're aware of that?

GA OK.

LH OK, and you're also aware of the fact however that we are putting these in what is in effect an escrow account - these documents and this video tape - an escrow, um, sort of holding place, uh, so that all of these documents in the video tape will be destroyed if the, uh, settlement does not go through. And you're aware of all that? ...OK?

GA Um-hum.

LH OK, uh, with that then why don't we take a picture of the mutual release of all claims and settlement agreement and then I'll ask you to sign it.

...zoom to document...

LH OK, now what I'm going to ask you to do is please is to initial each of the bottom of each of these pages, I'll turn the page for you and then you'll sign it, I think in two different places if you would.

...GA initials the document...

MF Oh you've got a signature there, Lar.

LH Oh, I'm sorry...that's right...right up here.

...GA continues to initial and sign the document...

LH OK and if you'd date and sign there please.

...GA signs the document...

MF You didn't want to eat dinner with any of those people anyway.

LH No, what did I want to go out to dinner for. Is that crazy? OK, let's see, if you give it to Mr. Flynn, he'll sign it ... and you'll take two separate pictures of these Ted.

...zoom into document...

MF Little art work?

GA I think it...I think we have to, seeing as that's how the checks are.

LH OK and I've just taken a picture of this affidavit and asked that you initial at the bottom of the pages and then sign it once you get your pen back.

...GA signs document...

MF (Laughs)

LH OK, and here is the second affidavit...

...zoom into document...

LH OK.

...GA signs document...

MF How do you do that so quickly? That's awesome.

LH Um... OK, do you have any sort of identification on you so we can give it to the notary?

GA Sure.

LH So she can notarize your documents.

GA We haven't met before, have we?

JR No.

LH Why don't I have you sign...

LH Uh, I don't think we need to take a picture of this, this is the stipulated sealing order but you know what, all of these are for Bruce Bunch's signature I think...

MF Oh, are they...

LH Because...

MF Should we get Bruce donw here at some point?

LH Well...

MF Bruce is in trial I think...

GA Yeah, he is.

MF Yeah, whatever, we can get Bruce back down here. He's in the middle of a trial...

LH I think I'd want either Bruce or Julia's signature on this.

MF Julia would probably be easier...

LH Yeah...

MF Cause Bruce is in the middle of a trial.

LH Well we can arrange for that, that shouldn't be a problem...

MF Well she's coming Monday to do hers...right?

LH Exactly, um, ok, I noticed by the way, in this stipulation for return of sealed materials, it also has Mr. Armstrong's signature and your signature on it so...Let's take a picture of that.

...zoom into document...

LH And have you had a chance to read this yet Mr. Armstrong?

GA Yeah.

LH OK...alright... would you date and sign that please.

GA I keep thinking it's '85.

LH It's a good way...certainly...not to confuse your signature...

GA No.

LH ...Because Mr. Armstrong is, um, putting a face on his signature.

GA Makes it valuable.

LH Exactly.

MF It's awesome...as opposed to my ugly scrawl.

LH You probably have the same artistic talent that I have, which is...

MF Mine is zero.

LH Zero to none. OK, and I think that's it. Thank you Ted. Oh OK, or do you have any questions?

GA No, no

MF Those are orders...

LH These are orders which will be signed by the attorneys which will relate to sealing the files so that no one can get into them as well dismissing your actions. Those will be signed when the entire settlement is finished, um, and then given to the court for Judge Breckenridge's signature.

GA OK...

LH OK.

MF We should put how many docs we got...

GA Do you need duplicate sets signed? Or is that...

MF No, no there's only one...

LH No.

...counting documents...

MF 1-2-3-4 here.

LH OK, I've got two here which is six and then there's two affidavits which is eight.

LH OK, and if you got a drivers license or...

GA Right here.

JR He gave it to me...

LH Already got it?

GA Yeah.

JR You need to put your signature there and your address there please.

LH So you had a good time today?

MF Oh yeah, we had an excellent time, it was very pleasant and we had a nice plane ride up - nice plane ride back...

LH Well Michael's good company.

MF Nice visit with ah...yeah, Mike's very good company... nice, pleasant...

LH I've flown with him once or twice myself.

MF Yeah.

LH The trouble with me, he ususally sleeps. I'm not sure why that is.

MF No, we didn't sleep, (laughs).

MF Witnesses, we need witnesses with some of these docs.

LH Uh, no I think there was a one...that's right.

MF ...several are needed...

LH ...well, just, no only...

MF ...just the release.

LH Only the ah, mutual release...did I see a witness signature there? And there were... you know let's get Ted back - As a matter of fact Ted, why don't you roll this again because we're going to have witnesses sign. Thanks for reminding me.

MS Should Ted be a witness?

LH Oh, you two were witnesses so far... OK, we're back on the camera - 9:15 - and I neglected to get witnesses signatures on the uh, mutual release of all claims and settlement agreement so why don't I do that right now.

...Witnesses sign...

MS Just the one?

LH Okee-dokee, yup, and those are affidavits. Will you stamp them? Thanks Ted. Allright, so...we want to put up all this down in the vault...

MF This all goes together.

LH ...and you've marked that stuff for Michael Hertzberg.

MF Yeah. All marked.

END OF TAPE